

4 13
1.
No. 1499

UNITED STATES CIRCUIT COURT of APPEALS
FOR THE NINTH CIRCUIT.

COE D. BARNARD,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

FILED

SEP 27 1907

TRANSCRIPT OF RECORD.

**Upon Writ of Error to the United States Circuit Court for
the District of Oregon.**

No. 1499

UNITED STATES CIRCUIT COURT of APPEALS
FOR THE NINTH CIRCUIT.

COE D. BARNARD,
Plaintiff in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

TRANSCRIPT OF RECORD.

**Upon Writ of Error to the United States Circuit Court for
the District of Oregon.**



INDEX.

	Page
Amendment to Proposed Bill of Exceptions	139
Arraignment, etc.	17
Assignment of Errors	47
Bill of Exceptions	81
Bill of Exceptions, Amendment to Proposed	139
Bill of Exceptions (Copy), Clerk's Certificate to Exhibits Attached to	205
Bill of Exceptions, Order Relative to	183
Bond, Supersedeas	73
Caption	7
Certificate, Clerk's, to Exhibits Attached to Bill of Exceptions (Copy)	205
Certificate, Clerk's, to Transcript of Record	206
Charge of the Court to Jury	116
Charge of the Court to Jury, Defendant's Excep- tions to	138
Citation on Writ of Error (Original)	3
Clerk's Certificate to Exhibits Attached to Bill of Exceptions (Copy)	205
Clerk's Certificate to Transcript of Record	207
Defendant's Exceptions to Charge of the Court to Jury	138
Demurrer to Indictment	27

Index.	Page
Demurrer to Indictment for Hearing, Order Setting	29
Demurrer to Indictment for Hearing, Order Setting	30
Demurrer to Indictment, Order Overruling	32
Exceptions, Defendant's, to Charge of the Court to Jury	138
Exhibits Attached to Bill of Exceptions (Copy), Clerk's Certificate to	205
Exhibit ———, Government's (Homestead Proof—Testimony of Claimant)	199
Exhibit "A," Government's (Homestead Proof—Testimony of Claimant)	88
Exhibit "1-a," Government's (Affidavit of Publication)	184
Exhibit "2-a," Government's (Certificate as to Posting of Notice)	186
Exhibit "3-a," Government's (Application for Homestead)	187
Exhibit "4-a," Government's (Receiver's Duplicate Receipt, No. 6395)	188
Exhibit "5-a," Government's (Non-mineral affidavit)	190
Exhibit "6-a," Government's (Non-mineral Affidavit)	192
Exhibit "7-a," Government's (Homestead Proof—Testimony of Witness)	193

Index.	Page
Government's Exhibit —— (Homestead Proof —Testimony of Claimant)	199
Government's Exhibit "A" (Homestead Proof —Testimony of Claimant)	88
Government's Exhibit "1-A" (Affidavit of Pub- lication)	184
Government's Exhibit "2-A" (Certificate as to Posting of Notice)	186
Government's Exhibit "3-A" (Application for Homestead)	187
Government's Exhibit "4-A" (Receiver's Dupli- cate Receipt No. 6395)	188
Government's Exhibit "5-A" (Non-Mineral Af- fidavit)	190
Government's Exhibit "6-A" (Non-Mineral Af- fidavit)	192
Government's Exhibit "7-A" (Homestead Proof —Testimony of Witness)	193
Hearing, Order Setting Demurrer to Indictment for	29
Hearing, Order Setting Demurrer to Indictment for	30
Indictment	7
Indictment, Demurrer to	27
Indictment for Hearing, Order Setting Demur- rer to	29

Index.	Page
Indictment for Hearing, Order Setting Demurrer to	30
Indictment, Order Overruling Demurrer to	32
Minutes Relative to Pleas in Abatement, Stipulation of Counsel Relative to Objections Thereto, etc.	25
Motion in Arrest of Judgment, Sentence, etc., Order Denying	42
Motion for New Trial, etc., Order Extending Time to File	40
Order Allowing Writ of Error	77
Order Denying Motion in Arrest of Judgment, Sentence, etc.	42
Order Extending Time to File Motion for New Trial, etc.	40
Order Extending Time to File Record	206
Order Extending Time to File Record (Original)	1
Order Extending Time to File Record (Original)	2
Order Extending Time of Return to Writ of Error	79
Order Overruling Demurrer to Indictment	32
Order Relative to Bill of Exceptions	183
Order Setting Cause for Trial	34
Order Setting Demurrer to Indictment for Hearing	29

Index.	Page
Order Setting Demurrer to Indictment for Hearing	30
Order Submitting Cause	31
Order that Indictment be Filed, and Fixing Bail for Defendant	16
Petition for Writ of Error	44
Plea	33
Plea in Abatement	18
Pleas in Abatement, Stipulation of Counsel Relative to Objections Thereto, etc., Min- utes Relative to	25
Proposed Bill of Exceptions, Amendment to . . .	139
Sentence, etc., Order Denying Motion in Arrest of Judgment	42
Stipulation of Counsel Relative to Objections Thereto, etc., Minutes Relative to Pleas in Abatement	25
Supersedeas Bond	73
Testimony on Behalf of Plaintiff:	
E. A. Putnam	81
Testimony on Behalf of Defendant:	
James Stewart	105
James Stewart (cross-examination)	106

	Index.	Page
Testimony of Morgan in Amendment to Proposed Bill of Exceptions (redirect examination)		157
Recross-examination		157
Redirect Examination		158
Recross-examination		158
Recross-examination		159
Redirect Examination		160
Recross-examination		161
Testimony of John Morgan in Amendment to Proposed Bill of Exceptions (recalled—cross-examination)		162
Redirect Examination		165
Recross-examination		171
Redirect Examination		171
Recross-examination		172
Redirect Examination		173
Testimony of E. A. Putnam in Amendment to Proposed Bill of Exceptions		150
Testimony of William Shepard in Amendment to Proposed Bill of Exceptions		142
Testimony of Stewart in Amendment to Proposed Bill of Exceptions (cross-examination)		180
Redirect Examination		182

Index.	Page
Trial (August 8, 1906).....	35
Trial (Resumed—August 9, 1906).....	36
Trial (Resumed—August 10, 1906).....	37
Trial (Resumed—August 11, 1906).....	38
Trial, Order Setting Cause for.....	34
Verdict	39
Writ of Error (Original)	5

*In the United States Circuit Court, for the District
of Oregon.*

COE D. BARNARD,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Order Extending Time to File Record (Original).

United States of America,

District of Oregon,—ss.

Whereas, the above-named defendant, Coe D. Barnard, has filed a petition for a writ of error in the above-entitled cause from the United States Circuit Court of Appeals for the Ninth Circuit, to the above-entitled court; and,

Whereas, said writ has been allowed and the assignment of errors filed and citation issued and served, and a writ of error issued in said cause; and,

Whereas, the proposed bill of exceptions in said cause has been duly filed and served, but owing to the absence of the judge who tried the case from the district, the same has not been settled; and,

Whereas, it is manifestly impossible to perfect and prepare the transcript within the time allowed for the return of said writ,—

Now, therefore, the time for returning said writ and docketing said cause in the said Circuit Court of Appeals and preparing and transmitting the record in said cause to the above-named Circuit Court of Appeals, is hereby extended until the 15th day of May, 1907.

Dated at Portland, Oregon, this 15th day of February, 1907.

CHAS. E. WOLVERTON,

District Judge Sitting as Circuit Judge.

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. *Coe D. Barnard vs. United States of America.* Order Extending Time to Docket Cause.

No. 1499. United States Circuit Court of Appeals for the Ninth Circuit. Order Extending Time to Docket Cause. Filed Feb. 25, 1907. F. D. Monckton, Clerk. Re-filed Sep. 6, 1907. F. D. Monckton, Clerk.

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2943—May 3, 1907.

UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

Order Extending Time to File Record (Original).

Now, at this day, comes the above-named plaintiff by Mr. William C. Bristol, United States Attorney, and the defendant herein by Mr. A. S. Bennett, of counsel, and, thereupon, upon agreement of the parties hereto, it is hereby ordered that the time heretofore allowed said defendant in which to file his transcript of record in this cause, in the United States Circuit Court of Appeals for the Ninth Circuit, be, and it is hereby, extended to the 1st day of September, 1907.

WILLIAM H. HUNT,
Judge.

[Endorsed]: No. 1499. United States Circuit Court of Appeals for the Ninth Circuit. Order Extending Time to File Record. Filed May 14, 1907. F. D. Monckton, Clerk. Re-filed Sep. 6, 1907. F. D. Monckton, Clerk.

Citation on Writ of Error (Original).

United States of America,
District of Oregon,—ss.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of

Appeals for the Ninth Circuit at San Francisco, California, within thirty days from the date hereof pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the District of Oregon, wherein Coe D. Barnard is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland in said district this 15th day of February, 1907.

CHAS. E. WOLVERTON,
District Judge Sitting as Circuit Judge.

United States of America,
District of Oregon,—ss.

Due and legal service of the attached and foregoing citation is hereby accepted and admitted at Portland in said district, this 15th day of February, 1907.

WM. C. BRISTOL,
United States District Attorney for the United States.

[Endorsed]: No. 2941. United States Circuit Court for the District of Oregon. United States of America vs. Coe D. Barnard. Citation on Writ of Error. U. S. Circuit. Filed Feb. 15, 1907. J. A. Sladen, Clerk. District of Oregon.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

COE D. BARNARD,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Writ of Error (Original).

The United States of America,—ss.

The President of the United States of America, to
the Judges of the Circuit Court of the United
States for the District of Oregon, Greeting:

Because in the records and proceedings, as also in
the rendition of the judgment of a plea which is in
the Circuit Court before the Honorable William H.
Hunt, one of you, between the United States of
America, plaintiff and defendant in error, and Coe
D. Barnard, defendant and plaintiff in error, a mani-
fest error hath happened to the great damage of the
said plaintiff in error, as by complaint doth appear;
and we, being willing that error, if any hath been,
should be duly corrected, and full and speedy jus-
tice done to the parties aforesaid, and in this behalf,
do command you, if judgment be therein given, that
then, under your seal, distinctly and openly, you send

the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this February 15, 1907.

[Seal]

J. A. SLADEN,

Clerk of the Circuit Court of the United States for
the District of Oregon.

District of Oregon,—ss.

I hereby certify that the foregoing writ of error was served upon the Circuit Court of the United States for the District of Oregon, by lodging a duly certified copy thereof with me as clerk of said court this 15th day of February, 1907.

J. A. SLADEN,

Clerk U. S. Circuit Court, District of Oregon.

[Endorsed]: In the U. S. Circuit Court of Appeals for the Ninth Circuit. Coe D. Barnard, Plaintiff in Error, vs. The United States of America, Defendant in Error. Writ of Error. Filed February 15, 1907. J. A. Sladen, Clerk United States Circuit Court, District of Oregon.

In the Circuit Court of the United States for the District of Oregon.

October Term, 1904.

Caption.

Be it remembered, that on the 8th day of April, 1905, there was duly filed in the Circuit Court of the United States for the District of Oregon, an indictment, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

Of the October Term in the Year of Our Lord Nineteen Hundred and Four.

UNITED STATES OF AMERICA

vs.

COE D. BARNARD.

Violation of Section 5392 of the Revised Statutes of the United States and Amendment of March 2, 1901.

Indictment.

District of Oregon,—ss.

The Grand Jurors for the United States of America, inquiring for the District of Oregon, upon their oath present that on the twenty-third day of June, in the year of our Lord nineteen hundred and four, Coe D. Barnard, late of the county of Wheeler, in the State and District of Oregon, at and within the said county of Wheeler, in the district aforesaid, came in person before James S. Stewart, who was then and there the duly appointed, qualified and acting United States Commissioner for the District of Oregon, and who was then and there an officer, who was authorized by the laws of the United States to administer an oath and to take the testimony of witnesses in the matter of the application of a claimant to make final proof upon a homestead entry of public lands of the United States lying within The Dalles land district of the United States in the said District of Oregon, and that the said James S. Stewart, as such United States Commissioner for the District of Oregon, was then and there engaged in taking and hearing testimony in the matter of the application of Charles A. Watson, late of said District of Oregon, to make final proof in support of his homestead entry for the south half of the northeast

quarter, the southeast quarter of the northwest quarter and northeast quarter of the southwest quarter of section 11, township 6 south, range 19 east, Willamette meridian, said lands so described being then and there public lands of the United States, upon which said Charles A. Watson had theretofore made a homestead filing at said land office of the United States at The Dalles, in said District of Oregon, under Section 2290, Revised Statutes of the United States, and said lands being then and there within said land district of the United States, and said District of Oregon, and that the said Coe D. Barnard then and there, to wit, on the day aforesaid, in the county and district aforesaid, subscribed his name to certain testimony, which had then and there been given by him before said James S. Stewart, as such United States Commissioner for the District of Oregon, in the matter aforesaid, and that said testimony, so then and there subscribed by him, was read to him before being so subscribed, and was then and there sworn to by him as true before said James S. Stewart, as such United States Commissioner for said District of Oregon, and that it then and there became, and was, material that the said James S. Stewart, as such United States Commissioner for the District of Oregon, and the register and receiver of said United States land office at The Dalles, in said District of Oregon, should know and be informed from

and by the said testimony whether the said Charles A. Watson had settled and resided upon and improved or cultivated the said lands so described, as required by the homestead laws of the United States, and if so, when such settlement and residence began, and how long it continued, and what was its character, and whether it commenced in the year 1898, and continued for five years thereafter, and especially whether the said Charles A. Watson had resided continuously on said land for a period of five years since first establishing residence thereon, and for what period or periods said Charles A. Watson had been absent from said land since making settlement thereon, and for what purpose he was so absent, and whether said Charles A. Watson had cultivated said land, and how much thereof he had so cultivated, and for how many seasons he raised crops thereon, and what improvements were on said land, and what was their value; and thereupon the said Coe D. Barnard then and there, to wit, at the time and place first aforesaid, was in due manner sworn by the said James S. Stewart, and made oath before him of and concerning the truth of the matters contained in said testimony so subscribed by him, and the said Coe D. Barnard, so being sworn as aforesaid, then and there, to prevent the said James S. Stewart, United States Commissioner for the District of Oregon, and the said Register and

Receiver of the United States Land Office at The Dalles, in said District of Oregon, from knowing the true facts and circumstances pertaining to the settlement and residence of the said Charles A. Watson upon, and his cultivation and improvement of the said lands, so described in and by his said testimony, so subscribed, willfully, corruptly and falsely, and contrary to his said oath, did depose and swear as in the said testimony set forth, of and concerning the material facts aforesaid, and did state and subscribe material matters which he did not then believe to be true; which said testimony, so given and subscribed by said Coe D. Barnard, was and is in the words and figures following, to wit:

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Coe D. Barnard, being called as witness in support of the Homestead entry of Charles A. Watson for S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, NW. $\frac{1}{4}$ and NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 11, Tp. 6 S. R. 19 E., W. M., testifies as follows:

Ques. 1.—What is your name, age and postoffice address?

Ans. Coe D. Barnard, age 31 years, Fossil, Ore.

Ques. 2.—Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3.—Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4.—State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Grazing land, rough and mountainous.

Ques. 5.—When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. In the spring of 1898, established residence at the same time.

Ques. 6.—Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes, except as stated below. He is unmarried. I live about eight miles from settler's place. In riding for my stock, I frequently ride past his place and stop at his house.

Ques. 7.—For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He made a trip to the Willamette Valley in July, 1902, for the benefit of his health and returned in October, 1902.

Ques. 8.—How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About two acres, he raised a garden on it every year since 1898. The rest of the land is too steep, rough and rocky for cultivation. He pastures about 25 head of his horses on the place.

Ques. 9.—What improvements are on the land, and what is their value?

Ans. Lumber house 12x16 lumber roof, lumber floor, one room, ceiled and papered, good spring water all fenced with three wires; total value of improvements about \$250.00. One door and one window.

Ques.10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11.—Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12.—Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. Yes.

[Sign plainly with full Christian name.]

COE D. BARNARD.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 23d day of June, 1904, at my office at Fossil, in Wheeler County, Oregon.

JAS. S. STEWART,
U. S. Com. for Oregon.

Whereas, in truth and in fact, the said Charles A. Watson, at the time when said Coe D. Barnard so subscribed and sworn to the truth of said testimony, as aforesaid, as he, the said Coe D. Barnard, then and there well knew, had never settled or resided upon or improved or cultivated the said land, so described, as required by the said homestead laws of the United States, or in any manner whatever, and had not settled upon and established actual residence thereon in the year 1898, or at any other time, and had not resided continuously on said land, so described, or any part thereof, since first establishing residence thereon, except when he made a trip to the Willamette Valley in July, 1902, for the benefit of his health, or otherwise or at all, and had not returned to said land and re-established his actual residence thereon in October, 1902, or at any other time in said year, or in any other year, and had not raised a crop on said land every year from 1898 to

1904, or during any of said years, and had not cultivated two acres of said land.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Coe D. Barnard, in manner and form aforesaid, in and by his said testimony, and upon his oath aforesaid, in a case in which a law of the said United States authorized an oath to be administered, unlawfully did willfully, and contrary to his said oath, state and subscribe material matters, which he did not then believe to be true, and thereby did commit willful and corrupt perjury against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Dated at Portland, Oregon, the eight day of April, 1905.

FRANCIS J. HENEY,

United States Attorney, District of Oregon.

W. H. H. WADE,

Foreman of United States Grand Jury.

Witnesses sworn and examined before the U. S. Grand Jury:

E. A. PUTNAM.

D. M. WALTON.

WILLIAM SHEPHARD.

A True Bill. W. H. H. Wade, Foreman of the Grand Jury. Filed April 8, 1905. J. A. Sladen, Clerk U. S. Circuit Court, District of Oregon.

And afterwards, to wit, on Saturday, the 8th day of April, 1905, the same being the 161st judicial day of the regular October, 1904, term of said court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2941—April 8, 1905.

UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

**Order that Indictment be Filed and Fixing Bail of
Defendant.**

Indictment: Section 5392, R. S., U. S.

Now, at this day, comes the grand jury impaneled herein, and through its foreman, presents to the Court an indictment charging the above-named defendant, Coe D. Barnard, with violation of section 5392, of the Revised Statutes of the United States, endorsed "a true bill," which indictment is received by the Court and ordered to be filed. And, on motion of said plaintiff, it is ordered that the bail of said de-

defendant be, and it is hereby, fixed at \$4,000.00, and that the Clerk of this Court approve said bond.

And afterwards, to wit, on Wednesday, the 12th day of April, 1905, the same being the 3d Judicial day of the regular April, 1905, term of the said Court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941—April 12, 1905.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

Arraignment, etc.

Indictment: Section 5392, R. S., U. S.

Now, at this day, comes the plaintiff herein by Mr. Francis J. Heney, United States Attorney, and the above-named defendant, Coe D. Barnard, in his own proper person and by Mr. A. S. Bennett, of counsel, and thereupon, said defendant is duly arraigned upon the indictment herein, and waives the reading of said indictment. And said defendant files herein, in open court, his plea in abatement of said indictment, whereupon, said plaintiff objects to said plea in abate-

ment, on the ground, first, that it comes too late, and second, that it contains matters which contradict the record or which are, if true, only provable by the testimony of the grand jury, or of the United States Attorney, who must be permitted to disclose that which the terms of their oaths or the general rules of law, requires them to keep secret, in order to contradict the same, and the effect of which is to impeach their verdict, and that such matters cannot be set up in a plea in abatement.

And afterwards, to wit, on the 12th day of April, 1905, there was duly filed in said court a plea in abatement, in words and figures, as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

COE D. BARNARD.

Defendant.

Plea in Abatement.

Now comes the defendant Coe D. Barnard in his own proper person and by Alfred S. Bennett, his

attorney, and having heard read the indictment in the above-entitled cause, and answering for and by way of plea in abatement thereto, saith :

That he ought not to be compelled to answer the said indictment because, as this defendant alleges, the pretended grand jury returning the same into court, was not a regularly organized or impaneled grand jury at the time of bringing in and returning said indictment, or at any time, and that said grand jury was not regularly organized or impaneled, but that on the contrary said grand jury was irregular and void in this :

That on the 18th day of October, 1904, said grand jury was impaneled and organized consisting of twenty-one persons including among others, W. E. Robertson and Carl Phelps, and the said grand jurors were sworn, and said W. E. Robertson appointed foreman ; that said Carl Phelps and W. E. Robertson were qualified and lawful jurors, to sit as grand jurors in said court, and had each and all of the qualifications required by law, and that said grand jury retired and commenced their investigation.

That thereafter and on the 19th day of October, 1904, said Robertson was excused for the term without cause, that nevertheless said grand jury continued to perform their duties and to investigate cases before them until the 25th day of October, 1904, when one

George Publer, who had never been a member thereof, was added to said grand jury by an order of this Honorable Court, and was impaneled and sworn as a grand juror and took his seat with said grand jurors, and from that time up to and including the finding of this indictment acted with said jurors, and took part as such pretended grand jury in the finding of the indictment in this case.

That thereafter the said pretended grand jury continued to transact business as such grand jury until about the 19th day of December, 1904, when one Fred. G. Buffum, who was not one of the grand jurors, originally impaneled and who had not acted with said grand jury up to that time, was by order of this court added to said pretended grand jury and impaneled and sworn as one of said grand jurors, and that he continued to act with said grand jurors as one of said grand jury up to the time that this indictment was returned into court, and took part in the investigation of this charge from that time up to the finding of this indictment and voted upon the finding thereof.

That thereafter and on the 27th day of January, 1905, and before this indictment was voted or returned into court, the aforesaid Carl Phelps was excused from such grand jury by order of this court, although he had been taking part in the investigation of this charge, and had heard the testimony therein, and that he never thereafter acted as such grand

juror all to the substantial prejudice of this defendant, all of which the said defendant is ready to prove and verify.

Wherefore, he prays judgment whether he shall be called further to answer the said indictment, and prays that the same may be quashed, and that he be dismissed from this court and go hence without day.

And for a still further answer and plea in abatement and for the reason why he ought not to be compelled to answer said indictment, the defendant believes and alleges:

That George Gustin was duly impaneled and sworn as a member of said grand jury at the time of its formation, and continued to sit with said grand jury up to the time that this indictment was returned, and participated in the taking of evidence against the defendant in this charge, and voted with the other grand jurors upon the finding of this indictment, and this defendant is informed and believes that said grand juror, George Gustin, was not a qualified juror at the time he was impaneled on said grand jury, or at the time of voting upon and returning said indictment, or ever at any time, for the reason that he was not at such times, and never had been, a citizen of the United States or of the District of Oregon, but that he was at said times and dates, and still is, a citizen of some foreign country, but what exact country is to this defendant unknown.

That this defendant was not present at the formation of said grand jury and had no opportunity to challenge said jurors, and had no knowledge of the disqualification of said juror Gustin until this day, all of which he is ready to prove and verify.

Wherefore, he prays judgment whether he shall be called further to answer the said indictment, and prays that the same may be quashed, and that he be dismissed from this court and go hence without day.

And for a still further answer and plea in abatement, defendant saith:

That he ought not to be compelled to answer the said indictment because defendant is informed and believes that Frank Bolter and Joseph Essner, who were sworn and impaneled as said grand jurors upon said panel, both of whom continued to act as said jurors up to the time of the return of this indictment and who participated in the taking of testimony therein, and in voting upon said indictment, were neither of them taxpayers in the county in which they resided, or in any county in the State of Oregon, nor was the name of either of them upon the preceding assessment-roll of said county or any county in said state at the time they were impaneled and sworn as such jurors, or at the time of the return of this indictment into court.

And this defendant further alleges and says: That by the laws of the State of Oregon, one of the qualifi-

cations for jurors in said state is that said juror's name be upon the preceding assessment-roll in the county in which he is called.

Wherefore, he prays whether he shall be called further to answer the said indictment, and prays that the same may be quashed, and that he may be dismissed from this court and go hence without day.

And for a still other and further answer and plea in abatement in, of and to said indictment, the defendant saith:

That he ought not to be compelled to answer the said indictment, because, as defendant is informed and believes, one Francis J. Heney, appeared and acted before said grand jury in the prosecution of said charge as a pretended United States District Attorney, and that said Francis J. Heney was not at all or any of said times a permanent or any resident of the District of Oregon, but a resident of the State of California, and that he could not lawfully act or appear as District Attorney, and never was and could not be by reason of said nonresidence, lawfully or legally appointed to said office, and never had any legal authority to act as such District Attorney; that he came to Oregon from said State of California temporarily only and for the purpose of prosecuting this cause and other causes of a similar nature, that he expects and has always expected to return to said State of California to reside permanently as soon as these

prosecutions are completed; that said Francis J. Heney greatly influenced said grand jury to find this indictment, and this defendant alleges that if said Francis J. Heney had not so unlawfully appeared before said grand jury this indictment would not have been brought all to defendant's substantial prejudice all of which defendant is ready to verify.

Wherefore, he prays judgment whether he shall be called further to answer the said indictment, and prays that the same may be quashed, and that he be dismissed from this court and go hence without day.

COE D. BARNARD.

ALFRED S. BENNETT,

Atty. for Deft.

United States of America,
District of Oregon,
County of Multnomah,—ss.

I, Coe D. Barnard, being first duly sworn, depose and say: That I have read the above and foregoing plea in abatement, and that the same is true as I verily believe.

COE D. BARNARD,

Sworn to and subscribed before me this 11th day of April, 1905.

[Seal]

C. H. SHOLES,

Notary Public for Oregon.

Filed in open Court April 12, 1905. J. A. Sladen,
Clerk.

And afterwards, to wit, on Tuesday, the 25th day of April, 1905, the same being the 14th judicial day of the regular April, 1905, term of said Court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge, presiding, the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941—April 25, 1905.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

Minutes Relative to Pleas in Abatement, Stipulation of Counsel Relative to Objections Thereto, etc.

Indictment: Section 5392, R. S., U. S.

Now, on this day, this cause coming on for decision upon the pleas in abatement heretofore filed by the above-named defendant, Coe D. Barnard, and said defendant being present in court by his counsel, Mr. Alfred S. Bennett, it is stipulated and agreed, in open Court, by and between the United States Attorney and said counsel for said defendant that the same objections which were filed in the case of the United States vs. John H. Mitchell, in case No. 2902, in this

court, may be deemed and treated as properly filed heretofore in this case in opposition to the plea in abatement heretofore filed by said defendant herein, and that the affidavit of Georgio Gustinianovich, and the certified copy of the decree of the County Court of the State of Oregon for Clatsop County, heretofore filed in said case No. 2902, in support of the aforesaid objections, be deemed and treated as offered in support of said objections to the pleas in abatement in this case, and that the same proceedings, rulings, objections, and exceptions that were made and had before this Court in said case No. 2902, in relation to the pleas in abatement, and the objections thereto, and to said affidavit and said certified copy of the decree of said County Court of the State of Oregon for Clatsop County, be deemed, considered and treated as having occurred upon the hearing of the pleas in abatement of said defendant, Coe D. Barnard, in this case, and that the orders, rulings and decrees of the Court this day made and entered in said case No. 2902, in relation to the pleas in abatement, and other matters and things incident thereto and connected therewith in said case No. 2902, be deemed, considered and treated as having been made in this case.

And afterwards, to wit, on the 27th day of April, 1905, there was duly filed in said court, a demurrer to indictment, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

COE D. BARNARD,

Defendant.

Demurrer to Indictment.

Now comes the defendant Coe D. Barnard in his own proper person and by Alfred S. Bennett, his attorney, and having heard the indictment in said cause read, demurs to the same and says:

That said indictment and the matter and facts stated therein, in manner and form as the same are so stated and set forth in said indictment, are not sufficient in law, and that the facts stated in said indictment are not sufficient to constitute a crime, and that he, the said defendant, is not bound by the law of the land to answer the same, and that this he is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the said defendant prays judgment as to said indictment, and that the same be quashed and adjudged insufficient, and that he be dismissed and discharged from answering the same.

COE D. BARNARD.

United States of America,
District of Oregon,—ss.

I, A. S. Bennett, hereby certify that I am an attorney of the above-entitled court, and that in my opinion said demurrer is well founded in law.

A. S. BENNETT.

Filed April 27, 1905. J. A. Sladen, Clerk U. S. Circuit Court for the District of Oregon.

And afterwards, to wit, on Monday, the 3d day of July, 1905, the same being the 62d judicial day of the regular April, 1905, term of said Court—Present, the Honorable JOHN J. DE HAVEN, United States District Judge for the Northern District of California, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941—July 3, 1905.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD,

Order Setting Demurrer to Indictment for Hearing.

Now, at this day, it is ordered that the hearing of this cause upon the demurrer of the defendant to the indictment herein be, and the same is hereby, set for Wednesday, July 5, 1905, at 10 o'clock, A. M.

And afterwards, to wit, on Wednesday, the 5th day of July, 1905, the same being the 63d judicial day of the regular April, 1905, term of said Court—Present, the Honorable JOHN J. DE HAVEN, United States District Judge for the Northern District of California, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941—July, 5, 1905.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD,

Order Setting Demurrer to Indictment for Hearing.

Indictment: Section 5392, R. S., U. S.

Now, at this day, on motion of Mr. Francis J. Heney, United States Attorney, it is ordered that this cause be, and the same is hereby, set for hearing upon the demurrer of said defendant to the indictment herein on Thursday, July 6, 1905, at 10 o'clock, A. M.

And afterwards, to wit, on Thursday, the 6th day of July, 1905, the same being the 64th judicial day of the regular April, 1905, term of said Court—Present, the Honorable JOHN J. DE HAVEN, United States District Judge for the Northern District of California, presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2941—July 6, 1905.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD,

Order Submitting Cause.

Indictment: Section 5392, R. S., U. S.

Now, at this day, comes the plaintiff by Mr. Francis J. Heney, United States Attorney, and the defendant not appearing, it is ordered that this cause be submitted to the Court upon demurrer of said defendant to the indictment herein without argument.

And afterwards, to wit, on Monday, the 10th day of July, 1905, the same being the 67th judicial day of the regular April, 1905, term of said Court—Present, the Honorable JOHN J. DE HAVEN, United States District Judge for the Northern District of California, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941—July 10, 1905.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

Order Overruling Demurrer to Indictment.

Indictment: Section 5392, R. S., U. S.

This cause was submitted to the Court upon the demurrer of said defendant to the indictment herein without argument and the Court having considered said demurrer and being fully advised in the premises, it is ordered, that said demurrer be, and the same is hereby overruled.

And afterwards, to wit, on Thursday, the 28th day of September, 1905, the same being the 136th judicial day of the regular April, 1905, term of said Court—Present, the Honorable WILLIAM H. HUNT, United States District Judge for the District of Montana, presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2941—September 28, 1905.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

Plea.

Indictment: Section 5392, R. S., U. S.

Now, at this day, comes the above-named plaintiff by Mr. Francis J. Heney, United States Attorney, and the defendant by Mr. A. S. Bennett, of counsel, and, thereupon, through his said attorney, said defendant enters his plea of “not guilty” to the indictment filed herein.

And afterwards, to wit, on Wednesday, the 11th day of July, 1906, the same being the 80th judicial day of the regular April, 1906, term of said Court—Present, the Honorable WILLIAM H. HUNT, United States District Judge for the District of Montana, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941—July 11, 1906.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

Order Setting Cause for Trial.

Indictment: Section 5392, R. S., U. S.

Now, at this day, on motion of Mr. Francis J. Heney, Special Assistant to the Attorney General, it is ordered that the trial of this cause be, and the same is hereby, set for Monday, July 23, 1906.

And afterwards, to wit, on Wednesday, the 8th day of August, 1906, the same being the 104th judicial day of the regular April, 1906, term of said Court—Present, the Honorable WILLIAM H. HUNT, United States District Judge for the District of Montana, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941—August 8, 1906.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

Trial.

Indictment: Section 5392, R. S., U. S.

Now, at this day, comes the above-named plaintiff by Mr. Wm. C. Bristol, United States Attorney, and the defendant herein, Coe D. Barnard, in his own proper person, and by Mr. A. S. Bennett, of counsel, and this being the day set for the trial of this cause, now come the following named jurors to try the issues joined, to wit: Rudolph Hochuli, William S. Beattie, J. G. Boos, Louis G. Clarke, T. Scott Brooke, Chester H. Bateman, Amos T. Huggins, Wm. A. Gröndahl, Ben C. Holladay, Walter

McMonies, H. C. Wortman, and Joseph W. Howell—twelve good and lawful men of the district, who, being accepted by both parties, duly impaneled and sworn, proceed to hear the evidence adduced, and the hour of adjournment having arrived the further trial of this cause is continued until to-morrow, Thursday, August 9, 1906, at 9:30 A. M.

And afterwards, to wit, on Thursday, the 9th day of August, 1906, the same being the 105th judicial day of the regular April, 1905, term of said Court—Present, the Honorable WILLIAM H. HUNT, United States District Judge for the District of Montana, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941—August 9, 1906.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

Trial (Resumed).

Indictment: Section 5392, R. S., U. S.

Now, at this day, come the parties hereto with and by their counsel as of yesterday, and the jury impaneled herein being present and answering to

their names, the trial of this cause is resumed, and the hour of adjournment having arrived, the further trial of this cause is continued until to-morrow, Friday, August 10, 1906, at 9:30 A. M.

And afterwards, to wit, on Friday, the 10th day of August, 1906, the same being the 106th judicial day of the regular April, 1906, term of said Court—Present, the Honorable WILLIAM H. HUNT, United States District Judge for the District of Montana, presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2941—August, 10, 1906.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

Trial (Resumed).

Indictment: Section 5392, R. S., U. S.

Now, at this day, come the parties hereto with and by their counsel as of yesterday, and the jury impaneled herein being present and answering to their names, the trial of this cause is resumed, and the hour of adjournment having arrived the further

trial of this cause is continued until to-morrow, Saturday, August 11, 1906, at 9:30 A. M.

And afterwards, to wit, on Saturday, the 11th day of August, 1906, the same being the 107th judicial day of the regular April, 1906, term of said Court—Present, the Honorable WILLIAM H. HUNT, United States District Judge for the District of Montana, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941—August 11, 1906.

THE UNITED STATES OF AMERICA.

vs.

COE D. BARNARD.

Trial (Resumed).

Indictment: Section 5392, R. S., U. S.

Now, at this day, come the parties hereto with and by their counsel as of yesterday, and the jury impaneled herein being present and answering to their names, the trial of this cause is resumed, and the said jury having heard the evidence adduced, the arguments of counsel, and the charge of the Court, retire from the courtroom under the charge

of proper sworn officers to consider of their verdict, and, after being out a short time, return into Court the following verdict, to wit: "We, the jury in the above-entitled cause, find the defendant, Coe D. Barnard, guilty as charged in the indictment, and we respectfully recommend him to the clemency of the Court. Louis G. Clarke, Foreman," which verdict is received by the Court and ordered to be filed.

And, thereupon, on motion of said defendant, it is ordered that said defendant be and he is hereby allowed 20 days from this date in which to move for a new trial herein. And, it is further ordered that said defendant do appear in this court for sentence, on Wednesday, Aug. 15, 1906.

And afterwards, to wit, on the 11th day of August, 1906, there was duly filed in said court a verdict, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

No. 2941.

THE UNITED STATES OF AMERICA

vs.

COE D. BARNARD

Verdict.

We, the jury in the above-entitled cause, find the defendant, Coe D. Barnard, guilty as charged in the indictment, and we respectfully recommend him to the clemency of the Court.

LOUIS G. CLARKE,

Foreman.

Filed August 11, 1906. J. A. Sladen, Clerk U. S. Circuit Court for the District of Oregon.

And afterwards, to wit, on Wednesday, the 15th day of August, 1906, the same being the 110th judicial day of the regular April, 1906, term of said court—Present, the Honorable WILLIAM H. HUNT, United States District Judge for the District of Montana, presiding—the following proceedings were had in said cause, to-wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941—August 15, 1906.

UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

**Order Extending Time to File Motion for New Trial,
etc.**

Indictment: Section 5392, R. S., U. S.

Now, at this day, comes the plaintiff, by Mr. Francis J. Heney, Special Assistant to the Attorney General, and the defendant in his own proper person, and by Mr. A. S. Bennett, of counsel, and this being the day set for imposing sentence upon said defendant, on motion of said plaintiff it is ordered that the time heretofore set for imposing sentence on said defendant, be, and it is hereby, continued to Saturday, August 18, 1906.

And, thereupon, on motion of said defendant, it is ordered that the time heretofore allowed said defendant in which to file a motion for a new trial, be, and the same is hereby, extended to August 25, 1906.

And afterwards, to wit, on Saturday, the 18th day of August, 1906, the same being the 113th judicial day of the regular April, 1906, term of said court—Present, the Honorable WILLIAM H. HUNT, United States District Judge for the District of Montana, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2941—August 18, 1906.

THE UNITED STATES OF AMERICA,

vs.

COE D. BARNARD

Order Denying Motion in Arrest of Judgment, Sentence, etc.

Indictment: Section 5392, R. S., U. S.

Now, at this day, comes the above-named plaintiff, by Mr. Francis J. Heney, Special Assistant to the Attorney General, and Mr. William C. Bristol, United States Attorney, and the defendant in his own proper person, and by Mr. A. S. Bennett, of counsel,

And, thereupon, this cause comes on to be heard upon the motion in arrest of judgment of said defendant, and was argued by counsel, on considera-

tion whereof, it is ordered that said motion be, and the same is hereby, denied; whereupon, said defendant excepts to said decision, and said exception is allowed by the Court.

And, thereupon, said plaintiff moves for judgment upon the verdict heretofore entered herein, and it appearing from the verdict of the jury filed herein found the defendant guilty as charged in the indictment herein. Whereupon it is considered that said defendant Coe D. Barnard be imprisoned at hard labor for the term of two years, and that he pay a fine of two thousand dollars (\$2,000.00), and it is ordered, until otherwise ordered or provided, the said sentence of imprisonment be executed at the United States penitentiary at McNeil's Island, Washington, and that said defendant stand committed until this sentence be performed or until he be discharged according to law.

And thereupon, on motion of said defendant, it is ordered that said defendant be, and the same is hereby, allowed sixty (60) days from this date in which to prepare, serve and submit his bill of exceptions herein; and,

It is further ordered, that a stay of execution be, and is hereby, allowed said defendant, in this cause, upon his giving a bond in the sum of eight thousand dollars (\$8,000.00) within 24 hours from this time,

the said bond to be taken by the clerk of this court, and to be approved by the same officer of the court.

And afterwards, to wit, on the 15th day of February, 1907, there was duly filed in said court a petition for writ of error, in words and figures as follows, to wit:

*In the United States Circuit Court for the District
of Oregon.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

COE D. BARNARD,

Defendant.

Petition for Writ of Error.

Your petitioner, the above-named Coe D. Barnard, the defendant in the above-entitled cause, brings this his petition for a writ of error, to the Circuit Court of the United States for the District of Oregon, and thereupon your petitioner shows:

That, on the 18th day of August, 1906, there was rendered and entered in the above-entitled court and in the above-entitled cause, a judgment against your petitioner, wherein and whereby your petitioner, the said Coe D. Barnard, was adjudged and sentenced to be imprisoned at

hard labor for a term of two years, and that he pays a fine of \$2,000; and your petitioner shows that he is advised by counsel that there was manifest error in the record and proceedings had in said cause, and in the rendition of said judgment and sentence, to the great injury and damage of your petitioner, all of which error will be more fully made to appear by an examination of the said record, and more particularly by an examination of the bill of exceptions by your petitioner tendered, and filed therein, and in the assignment of error thereon, hereinafter set out, and to that end, therefore, that the said judgment, sentence and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, your petitioner now prays that a writ of error may be issued, directed therefrom to the said Circuit Court of the United States for the District of Oregon, returnable according to law and the practice of the court, and that there may be directed to be returned pursuant thereto a true copy of the record, bill of exceptions, assignment of errors and all proceedings had in said cause, that the same may be removed into the United States Circuit Court of Appeals for the Ninth Circuit to the end that the error, if any has happened, may be duly corrected, and full and speedy justice done your petitioner.

And your petitioner now makes the assignment of errors attached hereto, upon which he will rely, and which will be made to appear by a return of the said record, in obedience to said writ.

Wherefore, your petitioner prays the issuance of a writ as hereinbefore prayed, and prays that the assignments of errors annexed hereto may be considered as his assignments of error upon the writ, and that the judgment rendered in this cause may be reversed and held for naught, and said cause be remanded for further proceedings.

COE D. BARNARD.

ALFRED S. BENNETT,

Attorney for Coe D. Barnard.

Filed February 15, 1907. J. A. Sladen, Clerk U. S. Circuit Court for the District of Oregon.

And afterwards, to wit, on the 15th day of February, 1907, there was duly filed in said court an assignment of errors, in words and figures as follows, to wit:

*In the United States Circuit Court for the District
of Oregon.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

COE D. BARNARD,

Defendant.

Assignment of Errors.

Now comes Coe D. Barnard, defendant, in the above-entitled cause, and plaintiff in error herein, having petitioned for an order from said Court permitting him to procure a writ of error to this Court, directed from the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and sentence made and entered in said cause against the said Coe D. Barnard, plaintiff in error, and petitioner herein, now makes and files herein with the petition, the following assignments of error herein, upon which he will rely for the reversal of said judgment and sentence upon the said writ; and says that

in the record and proceedings in the above-entitled cause upon the hearing and determination thereof in the Circuit Court of the United States for the District of Oregon, there was and is manifest error in this, to wit:

First.—That the said Circuit Court erred in overruling the demurrer of the said defendant Coe D. Barnard to the indictment filed in the said cause, demurring to the said indictment.

Second.—In overruling the objection of the said defendant to the question asked the witness E. A. Putnam as follows:

Q. State whether or not there was anything in that conversation that showed, or tended to show, where Watson had been about that time or immediately preceding it?

And in permitting the witness to answer the question as follows:

A. He said he had his foot cut at the time—he said he had been working on the Columbia River, down about St. Helens, somewhere, and said he was going home and going out to where his folks lived.

Third.—In overruling the defendant's objection to the following question asked of the witness:

Q. Did he say where that was?

And in permitting the witness to answer the same:

A. Yes, sir, out towards Forest Grove, out in Washington County.

Fourth.—In overruling the defendant's objection to the following question asked of the said witness:

Q. What was the logging camp, did he state?

And in permitting the witness to answer the same:

A. It was somewheres about St. Helens, somewhere down about in there, I think it was.

Fifth.—In overruling the objection of the defendant to the question asked of one William Shepard while on the stand as a witness for the Government in said cause, the question was as follows:

Q. And did he state at that time, or in connection with that same matter, while you were conversing, the reason why he didn't go back to it?

And in permitting the witness to answer the same as follows:

A. Well, he asked me how it would be for him to go back there, and I answered, if you are making a good living here and trying to be honest you had better stay where you are.

Sixth.—In overruling the defendant's objection to the following question asked the witness Shepard:

Q. What was the rest of the conversation, if any?

And in permitting the witness to answer the same as follows:

A. Well, it was about the horses he brought down. I asked him what prices he got for them, and so on.

Seventh.—In overruling the objection of the defendant to the question asked of the said witness Shepard as follows:

Q. What was the fact about their saying anything at that time about the ranch?

And in permitting the witness to answer the same as follows:

A. He said he wanted to go back and prove up.

Eighth.—In overruling the defendant's objection to the question asked of the said witness as follows:

Q. Did he say why?

And in permitting said witness to answer the same as follows:

A. He said parties wanted him to go back and prove up.

Ninth.—In overruling the defendant's objection to the question asked of the witness as follows:

Q. Did he say why?

And in permitting the said witness to answer the same asme as follows:

A. He said parties wanted him to go back.

Tenth.—In overruling the objection of the defendant to the following question asked the said witness:

Q. Whom did he say wanted him to go back?

And in permitting said witness to answer the same:

A. He had reference to Mr. Hendricks.

Eleventh.—In overruling the defendant's objection to the question asked the said witness as follows:

Q. And did he give you any reason as to why he would not go back?

And in permitting said witness to answer the same:

A. He didn't think the people wanted him, I guess.

Twelfth.—In overruling the defendant's objection to the question asked of said witness, as follows:

Q. Did he tell you why?

And in permitting said witness to answer the same, as follows:

A. No, he didn't tell me exactly.

Thirteenth.—In overruling defendant's objection to the question asked of said witness as follows:

Q. Did he give you any reason why?

And in permitting said witness to answer the same:

A. Well, all the reason was that there were some horses run off that spring, and he was hired to do it, and he didn't suppose the settlers wanted him to go back.

Fourteenth.—In overruling and denying the motion of the defendant to strike out the conversation between the said witness Shepard and Watson, on the ground that the same was incompetent and hearsay against the defendant, and to the ruling of the Court that the same was competent and relevant and admissible as bearing on the question or the residence of by Watson.

Fifteenth.—In overruling the defendant's objection to the question asked of the witness John Morgan as follows:

Q. Whereabouts?

And in permitting said witness to answer said question:

Sixteenth.—In overruling the defendant's objection to the offer of the District Attorney to show that, "At the time the witness proved up, C. D. Barnard was one of the witnesses, at that time we will show that this witness never had resided and never did reside on that claim, we will show it as a similar act."

And in holding that the same was competent and material.

Seventeenth.—In overruling the defendant's objection to the question asked the said witness as follows:

Q. What is the fact Mr. Morgan as to who your witnesses were at the time you made this purported proof.

Eighteenth.—In overruling the defendant's objection to the final proof papers of the said John Morgan and in permitting the same to be offered, received and read in evidence.

Nineteenth.—In overruling the objection of the defendant to the question asked of the said witness Morgan as follows:

Q. Now, as to the homestead, Mr. Morgan, that is covered by Government's Exhibit "A," which you have identified, tell the Court and jury as to what is the fact as to whether or not you ever established an actual residence upon it, ever cultivated it or actually continued to reside upon it for the period set forth in this proof?

And in permitting said witness to answer the same:

A. No, I didn't live on it—I did not cultivate it.

Twentieth.—In overruling the defendant's objection to the following question asked of the witness, Morgan:

Q. I notice question 12, "Have you sold, conveyed, or mortgaged any portion of the land and if so to whom, and for what purpose," and I see the answer is written, no. At the time you made your proof what is the fact as to your having any agreement as to your claim?

And in permitting the witness to answer the said question:

A. Well, I had taken the claims for the Butte Creek Company.

And in the ruling of the said Court holding said question, and answer proper and competent as tending to show system, knowledge, and intent upon the part of the defendant.

Twenty-first.—In overruling the defendant's objection to the following question asked of the witness, Morgan:

Q. What Butte Creek Company?

And in permitting the witness to answer the same, as follows:

A. The Butte Land, Livestock and Lumber Company.

Twenty-second.—In overruling the defendant's objection to the following question asked of said witness:

Q. How did you come to take it for it?

And in permitting the said witness to answer the same as follows:

A. Well, Mr. Zachary asked me to take it up and that is how I came to take it up.

Twenty-third.—In overruling and denying defendant's motion to strike out the aforesaid answer of the witness that "Well, Mr. Zachary asked me if I would take it up and that is how I came to take it up," upon the ground that the same is incompetent, and immaterial and in not allowing the said motion.

Twenty-four.—In overruling the defendants objection to the question asked of the witness James S. Stewart, as follows:

Q. State whether or not you recognized it. (Government's Exhibit "A.")

And in permitting the said witness to answer the same:

A. It is the homestead proof made by John Morgan before me.

Twenty-fifth.—In overruling the defendant's objection to the question asked of the said witness James S. Stewart as follows:

Q. Does it show the accompanying testimony aduced from his witnesses in reference to the same matter?

And in permitting the said witness to answer the same:

A. Yes, sir.

Twenty-sixth.—In overruling the defendant's objection to the question asked of the said witness as follows:

Q. State who the witnesses were who appeared before you at the time and if not at the same time, about the same time in connection with the matter?

And in permitting the said witness to answer the same:

A. One is Robert Zachary and one is Coe Barnard.

Twenty-seventh.—In overruling the defendant's objection to the following question asked of the said witness?

Q. Inform the jury as to what the fact is as to whether the Coe Barnard is the same Coe Barnard,

the defendant in this case?

And in permitting the said witness to answer the same:

A. Yes, sir.

Twenty-eighth.—In overruling the defendant's objection to the following question asked the said witness:

Q. Who signed it?

And in permitting the said witness to answer the same:

A. Mr. Barnard.

Twenty-ninth.—In overruling the defendant's objection to the following question asked of the said witness, James S. Stewart, called as a witness for defendant on his cross-examination:

Q. What homestead do you know?

And in permitting him to answer the same:

A. The homestead described here (indicating the final proof which had been shown him).

Thirtieth.—In overruling the defendant's objection to that part of the question asked of the said witness Stewart, on said cross-examination in which the said witness was asked to state as to what he knew as to what Coe D. Barnard had sworn, of his own knowledge, the question being as follows:

Q. What is the fact Mr. Stewart, what is the fact as to whether or not you have heard or know whether Coe D. Barnard on or about the 23d day of June, 1905, before you as United States Commissioner

gave any testimony under oath in the matter before you?

And in permitting the witness to answer the same:

Thirty-first.—In overruling the defendant's objection to the admission of the final proof papers of Coe D. Barnard, which were as follows:

4—369.

HOMESTEAD PROOF—TESTIMONY OF CLAIMANT.

Coe D. Barnard, being called as a witness in his own behalf in support of homestead entry No. 6766, for NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ E. $\frac{1}{2}$ NW. $\frac{1}{4}$ and NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 32, Tp. 6 S., R. 20 E., W. M., testifies as follows:

Ques. 1.—What is your name, age, and postoffice address?

Ans. Coe D. Barnard; age 31; Fossil, Oregon.

Ques. 2.—Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?*

Ans. Yes; Oregon.

Ques. 3.—Are you the identical person who made homestead entry No. 6766, at the Dalles, Oregon land office on the 6th day of September, 1898, and what is the true description of the land now claimed by you?

* In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases.

Ans. NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ and NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$, Sec. 32, Tp. 6 S. Range 20 E., W. M.

Ques. 4.—When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. House built in Nov. 1898. Established residence Nov. 1898. Lumber house, 12 by 16 ft. one room, one door and one window good lumber floor, walls ceiled and papered. Stovepipe goes through roof; roof is well protected from fire. Abundance of Spring water. House is comfortable and habitable at all seasons of the year. Good barn 40 feet long, 20 ft. built of lumber and roofed with clapboards, chicken-house and closet, 120 acres fenced with three wires fence, 20 acres plowed good garden with large berry bushes. Total value of improvements \$800.00.

I have pastured about 50 head of my cattle on my place on an average each year—sometimes more and sometimes less.

Ques. 5.—Of whom does your family consist; and have you and your family resided continuously on

the land since first establishing residence thereon?
(If unmarried, state the fact.)

Ans. Myself, wife and two small children. Yes, except as stated below.

Ques. 6.—For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. Myself and family were gone a month in the spring of 1903, visiting relatives in Southern Oregon. It was the month of April, 1903.

Ques. 7.—How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. 20 Acres. Six years. Grain crop each year.

Ques. 8.—Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. No.

Ques. 9.—What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. Mostly grazing land—hilly.

Ques. 10.—Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11.—Have you ever made any other homestead entry? (If so, describe the same.)

Ans. No.

Ques. 12.—Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. No.

Ques. 13.—Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

Ans. None except horses and cattle on the range.

Ques. 14.—Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. No.

[Sign plainly with full Christian name.]

COE D. BARNARD.

I hereby certify that the foregoing testimony was read to the claimant before being subscribed, and was sworn to before me this 23 day of June, 1904, at my office at Fossil, in Wheeler County, Oregon.

[See note below.] JAS. S. STEWART,
U. S. Commissioner for Oregon.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testified falsely, to prosecute him to the full extent of the law.

Title LXX.—CRIMES.—Ch. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See § 1750.)

**FINAL AFFIDAVIT REQUIRED OF HOME-
STEAD CLAIMANTS.**

**SECTION 2291 OF THE REVISED STATUTES
OF THE UNITED STATES.**

I, Coe D. Barnard, having made a homestead entry of the NW. $\frac{1}{4}$, NE. $\frac{1}{4}$, E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, and NW. $\frac{1}{4}$, NW. $\frac{1}{4}$; Section No. 32 in Township No. 6 S. of Range No. 20 E., W. M., subject to entry at The Dalles Oregon Land Office under section No. 2289 of

the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of section No. 2291 of the Revised Statutes of the United States; and for that purpose do solemnly swear that I am a native-born citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said land since the —— day of ——, 19——, to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes; but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government of the United States; and, further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

[Sign plainly with full Christian name.]

COE D. BARNARD.

I, Jas. S. Stewart, of Fossil, Oregon, do hereby certify that the above affidavit was subscribed and sworn to before me this 23d day of June, 1904, at my office at Fossil, in Wheeler County, Oregon.

JAS. S. STEWART,

U. S. Com. for Oregon.

[Endorsed]: 4—369. Homestead Proof. Land Office at The Dalles Oregon. Original Application No. 6766. Final Certificate No.———. Approved:

—————, Register. —————, Receiver. Suspended Pending Investigation by Special Agent Thos. B. Nuhausen. Michael T. Noland, Register. Annie M. Lang, Receiver.

4—369.

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Clyde Glass, being called as witness in support of the homestead entry of Coe D. Barnard for NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$ and NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 32, Tp. 6 S., R. 20 E., W. M., testifies as follows:

Ques. 1.—What is your name, age, and postoffice address?

Ans. Clyde Glass; age 31; Fossil, Oregon.

Ques. 2.—Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3.—Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4.—State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Principally grazing—hilly.

Ques. 5.—When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. In fall of 1898—established residence that year—long about December.

Ques. 6.—Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes. I lived on the place working for Mr. Barnard for 2 or 3 years. I now live about 14 miles from it.

Ques. 7.—For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. None.

Ques. 8.—How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 20 acres—raised grain crops for six years.

Ques. 9.—What improvements are on the land, and what is their value?

Ans. Good lumber house, board roof, size of house 12x16; good lumber floor, inside ceiled and papered; good spring water; one door and one window in

house; good lumber barn, size 40x20; chicken-house and other outbuildings; 120 acres of place fenced with good 3 wire fence. Total value of improvements, \$750 or \$800.

Ques. 10.—Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11.—Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. No.

Ques. 12.—Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. Yes.

[Sign plainly with full Christian name.]

CLYDE GLASS.

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 23d day of June, 1904, at my office at Fossil, in Wheeler County, Oregon.

[See note on fourth page.]

JAS. S. STEWART,
U. S. Com. for Oregon.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

4—369.

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Clarence B. Zachary, being called as witness in support of the homestead entry of Coe D. Barnard for NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, and NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 32, Tp. 6 S., R. 20 E., W. M., testifies as follows:

Ques. 1.—What is your name, age, and postoffice address?

Ans. Clarence B. Zachary; age 39; Fossil, Oregon.

Ques. 2.—Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3.—Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4.—State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Principally grazing land.

Ques. 5.—When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. In fall of 1898. Established residence then.

Ques. 6.—Have claimant and family resided con-

tinuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes. I live four miles from settler's homestead.

Ques. 7.—For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. None.

Ques. 8.—How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 20 acres—raised grain on it every year since 1898.

Ques. 9.—What improvements are on the land, and what is their value?

Ans. Lumber house 12x16; lumber roof, one door and one window; good lumber floor, inside ceiled and papered; stove pipe passes through roof in safe condition; abundance of good spring water, lumber barn 40x20 ft.; clapboard roof chicken house, 20 acres plowed, 120 acres fenced with three wire fence. Total value of improvements \$800.00.

Ques. 10.—Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the

land is more valuable for agricultural than for mineral purposes.)

Ans. Not that I know of.

Ques. 11.—Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not that I know of.

Ques. 12.—Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No—yes.

[Sign plainly with full Christian name.]

CLARENCE B. ZACHARY.

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 23d day of June, 1904, at my office at Fossil, in Wheeler County, Oregon.

[See note on fourth page.]

JAS. S. STEWART,

U. S. Com. for Oregon.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

And in permitting the same to be offered as a part of the cross-examination of the said witness and to be received and read in evidence therein.

Thirty-second.—In refusing to instruct the jury in said cause as follows:

“If the defendant thought that going upon the land and staying once in six months was a continuous residence within the meaning of the law, you should consider that fact in passing upon his good faith, and if you have a reasonable doubt as to what he believed upon the subject you should give him the benefit of that doubt.”

Thirty-third.—In failing and refusing to instruct the jury as requested by the defendant as follows:

“A homestead claimant has a right to lease or let a part of his claim to other parties for cultivation, and doing so before he proves up is no violation of the homestead law.”

Thirty-fourth.—In failing and refusing to instruct the jury in said cause as follows; as requested by defendant:

“The cultivation by a tenant or agent in good faith might be a sufficient cultivation within the meaning of the law.”

Thirty-fifth.—In failing and refusing to instruct the jury as requested by the defendant as follows:

“An enclosure made by joining a fence to a bluff is a fencing within the meaning of the law.”

Thirty-sixth.—In failing and refusing to instruct said jury as requested by the defendant as follows:

“In this case I charge you that the indictment is insufficient to sustain a verdict of guilty, and you should find the defendant not guilty.”

Thirty-seventh.—In failing and refusing to instruct the jury as requested by the defendant as follows:

“You should not permit any clamor or public opinion, real or imagined, to prevent you from giving the defendant a fair trial, and the benefit of all reasonable doubt.”

Thirty-eighth.—In failing and refusing to instruct the said jury as requested by the defendant as follows:

“No mere carelessness or recklessness on the part of the defendant in giving his evidence in the Watson final proof will sustain the charge of perjury in this case, but it will be made to appear beyond a reasonable doubt that his statements were willfully and intentionally false, and that he did not believe them to be true.”

Thirty-ninth.—In failing and refusing to instruct said jury as requested by the said defendant as follows:

“You have no right to consider the homestead proof of Barnard, upon his own land as bearing in any way upon his honesty and integrity or truth and veracity, you can only consider it as bearing upon the credibility of the witness Stewart.”

Fortieth.—In failing and refusing to instruct said jury as requested by the said defendant as follows:

“You cannot find the defendant guilty of perjury

in the matter of the statement that there was about two acres in cultivation.”

Forty-first.—In failing and refusing to instruct said jury as requested by the defendant as follows:

“You cannot find the defendant guilty in this cause on account of any falsity, real or supposed as to the statement in the proof that there was a house or fencing on the land.”

Forty-second.—That the Court erred in instructing the jury as follows:

“Consider the specific answers made to the questions I have read, not only as to the general question of good faith, but as to the particular acts that he testifies to concerning Watson’s settlement and cultivation.”

Forty-third.—That said Court erred in instructing the jury in relation to the evidence of other offenses, as follows:

“But I repeat such evidence was offered and admitted and must be limited in your consideration to its relevancy as to the design or intent, or knowledge, or system, that the defendant may have had in doing the particular act charged against him.”

Forty-fourth.—That the Court erred in refusing defendant’s motion in arrest of judgment in said cause and in not allowing the same.

Forty-fifth.—That the Court erred in refusing defendant’s motion to set aside the verdict and for a

new trial in said cause, and for not allowing said motion.

Forty-sixth.—That the Court erred in pronouncing sentence against said defendant.

COE D. BARNARD,

Plaintiff in Error.

ALFRED S. BENNETT,

Attorney for Plaintiff in Error.

United States of America,
District of Oregon,—ss.

I hereby certify that the foregoing assignments of error are made on behalf of the petition for a writ of error herein, and are, in my opinion, well taken, and the same now constitute the assignment of errors upon the writ prayed for.

ALFRED S. BENNETT,

Attorney for Plaintiff in Error.

Filed February 15, 1907. J. A. Sladen, Clerk U. S. Circuit Court for the District of Oregon.

And afterwards, to wit, on the 15th day of February, 1907, there was duly filed in said court a supersedeas bond, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

COE D. BARNARD,

Defendant.

Supersedeas Bond.

Know all men by these presents, that we, Coe D. Barnard, of Fossil, State of Oregon, as principal, and Thomas A. Rhea of Portland, State of Oregon, and Columbus A. Rhea of Portland, State of Oregon as sureties, are held and firmly bound unto the United States of America in the full and just sum of \$8,000, to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents:

Sealed with our seals and dated this 15th day of Feb. in the year of our Lord, one thousand nine hundred and seven.

Whereas, lately at the April term, A. D. 1906, of the Circuit Court of the United States for the District of Oregon in the suit pending in said court between the United States of America, and Coe D. Barnard, defendant, a judgment and sentence was rendered against the said Coe D. Barnard, and the said Coe D. Barnard has obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, 30 days from and after the day of said citation, which citation has been duly served.

Now the condition of the above obligation is such that if the said Coe D. Barnard shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his writ of error, and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against him shall be affirmed; and if he shall appear for trial in the Circuit Court of the United

States for the District of Oregon on such day or days as may be appointed for the retrial by said Circuit Court, and abide by and obey all orders made by said Court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit; then the above obligation to be void; otherwise to remain in full force, virtue and effect.

COE D. BARNARD. [Seal]

THOMAS A. RHEA. [Seal]

COLUMBUS A. RHEA. [Seal]

Signed, sealed and delivered in the presence of:

Signed, sealed and acknowledged this 15th day of Feb. 1907, before me.

[Seal]

J. A. SLADEN,

Clerk United States Circuit Court, District of Oregon.

United States of America,
District of Oregon,—ss.

I, Thomas A. Rhea, being duly sworn, depose and say that I am a resident and freeholder within said district, and that I am worth in property situate therein the sum of eight thousand dollars (\$8,000) over and above all my just debts and liabilities and exclusive of property exempt from execution.

THOMAS A. RHEA.

Subscribed and sworn to before me this 15th day of February, 1907.

[Seal] J. A. SLADEN,
Clerk United States Circuit Court, District of Oregon.

United States of America,
District of Oregon,—ss.

I, Columbus A. Rhea, being duly sworn, depose and say that I am a resident and freeholder within said district, and that I am worth in property situate therein the sum of eight thousand dollars (\$8,000) over and above all my just debts and liabilities and exclusive of property exempt from execution.

COLUMBUS A. RHEA.

Subscribed and sworn to before me this 15th day of February, 1907.

[Seal] J. A. SLADEN,
Clerk United States Circuit Court, District of Oregon.

Filed February 15, 1907. J. A. Sladen, Clerk U. S. Circuit Court for the District of Oregon.

And afterward, to wit, on Friday, the 15th day of February, 1907, the same being the 97th judicial day of the regular October, 1906, term of said Court—Present, The Honorable CHARLES E. WOLVERTON, United States District Judge for the District of Oregon, presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the
District of Oregon.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

COE D. BARNARD.

Defendant.

Order Allowing Writ of Error.

Now, at this time, comes the defendant, Coe D. Barnard, by Alfred S. Bennett, his attorney, and presents to the Court his petition praying for the allowance of a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit, to the above-entitled court and the above-entitled cause, and has submitted therewith his assignment of errors, and his bond for appearance in the sum of \$8,000.00 (that being the amount of bail hertofore fixed by the Court).

Whereupon it is ordered that said bond be accepted and approved, and that the prayer of said petitioner be granted, and that the clerk of the court be and he is hereby, directed to issue the writ of error prayed for in said petition, and that sentence and execution in said cause be stayed until the final disposition of said writ in said United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 15th day of February, 1907.

CHARLES E. WOLVERTON,

District Judge sitting as Circuit Judge.

Filed February, 15, 1907. J. A. Sladen, Clerk U. S. Circuit Court for the District of Oregon.

And afterwards, to wit, on Friday, the 15th day of February, 1907, the same being the 97th judicial day of the regular October, 1906, term of said Court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge for the District of Oregon, presiding—the following proceedings were had in said cause, to wit:

In the United States Circuit Court for the District of Oregon.

COE D. BARNARD,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Order Extending Time of Return to Writ of Error.

United States of America,

District of Oregon,—ss.

Whereas, the above-named defendant, Coe D. Barnard, has filed a petition for a writ of error in the above-entitled cause from the United States Circuit Court of Appeals for the Ninth Circuit, to the above-entitled court; and,

Whereas, said writ has been allowed and the assignment of errors filed and citation issued and served, and a writ of error issued in said cause; and,

Whereas, the proposed bill of exceptions in said cause has been duly filed and served, but owing to the absence of the judge who tried the case from the district the same has not been settled; and,

Whereas, it is manifestly impossible to perfect and prepare the transcript within the time allowed for the return of said writ,

Now, therefore, the time for returning said writ and docketing said cause in the said Circuit Court of Appeals and preparing and transmitting the record in said cause to the above-named Circuit Court of Appeals is hereby extended until the 15th day of May, 1907.

Dated at Portland, Oregon, this 15th day of February, 1907.

CHAS. E. WOLVERTON,

District Judge Sitting as Circuit Judge.

Filed February 15, 1907. J. A. Sladen, Clerk U. S. Circuit Court for the District of Oregon.

And afterwards, to wit, on the 3d day of May, 1907, there was duly filed in said court, a bill of exceptions, in words and figures as follows, to wit:

In the United States Circuit Court for the District of Oregon.

U. S. OF AMERICA,

Plaintiff,

vs.

COE D. BARNARD,

Defendant.

Bill of Exceptions.

Be it remembered that the above-entitled cause came on for trial upon the indictment on the ——— day of ———, 1906, before the Honorable Wm. H. Hunt, Judge, and a jury duly impaneled, and during the trial of said cause and as a part of the government's direct case one E. A. Putnam was called as a witness, who having testified that his name was E. A. Putnam, that he lived in Douglas County at the present time, that he knew the defendant Mr. Barnard, that he had lived in Wheeler County about twenty-six or twenty-seven years, that he knew a man by the name of Charles A. Watson, that he saw him in Portland, Oregon, at the Merchants Hotel about the last of April—about the 28th, that there was no other

(Testimony of E. A. Putnam.)

persons present that he was acquainted with, that he had a conversation with Mr. Watson at that time and place and they talked some; whereupon the witness was asked the following question,

Q. State whether or not there was anything in that conversation that showed or tended to show where Watson had been about that time or immediately preceding it?

To which the defendant objected as incompetent and in not any way binding upon the defendant in this cause and as hearsay and as not the best evidence, but the objection was overruled and the defendant excepted.

The Court saying, "It is understood the question is admitted solely as bearing upon the question as to whether or not Watson did state the truth in regard to the answers that he made in making his proof."

Whereupon the witness answered, "He said he had his foot cut at the time—he said he had been working on the Columbia River, down about St. Helens, somewhere, and said he was going home, and going out to where, his folks lived.

Q. Did he say where that was?

Same objection, ruling and exception.

A. Yes, sir, out towards Forest Grove, out in Washington County.

Q. What was the logging camp, did he state?

(Testimony of E. A. Putnam.)

Same objection, ruling and exception.

A. It was somewhere about St. Helens, somewhere down about in there, I think it was.

Said Charles A. Watson had not been called or testified as a witness in said cause and did not testify as a witness therein.

Be it further remembered that during the trial of said cause and as a part of the Government's direct case, one William Shepard was called as a witness and testified that his name was William Shepard, that he lived at Mountindale, Washington County in Oregon, that that was west of Portland about 23 miles, that he had lived at Mountindale since 1893, that he went there in the Spring of 1892, that he had met a man by the name of Charles A. Watson, that he had met a man by the name of Coe D. Barnard (witness then identified the defendant Barnard), that he had not resided in the Fossil country since 1902, that he left Wheeler County in June, 1902, that he thought it was on the 19th of June, that he went from there to Mountindale, that he saw Charles A. Watson round Mountindale in 1902, that he was hauling lumber for William Hollenbeck from a sawmill on Dairy Creek, pretty nearly north from Mountindale, 9 miles from Mountindale, that Watson was there to the best of his knowledge about two weeks hauling timber in June or July, that it was after the third of July when he (the witness) landed there and after

(Testimony of E. A. Putnam.)

the third of July that he saw Watson working for Hollenbeck, that he didn't see Watson after that until he saw him here in Portland, that he saw Watson running a saloon at Greenville in 1901, that Greenville is about 7 or 8 miles from Mountindale, that he did not know exactly how long Watson was running his saloon there, that he (the witness) landed there about the 21st of June with some horses and returned there about the 25th of July, that he saw Watson there about that time thre or four times, pretty near every day he would go to Greenville with a horse and team, that Watson was running the saloon alone himself, that he had talked with Watson at that time.

Whereupon the following question was asked him :

Q. And did he state at that time, or in connection with that same matter while you were conversing, the reason why he didn't go back to it?

To this the defendant objected on the same grounds as to the testimony of E. A. Putnam, as hereinbefore stated. That is that it was incompetent and not in any way bearing upon the defendant in this case and as hearsay and as not the best evidence. But the objection was overruled and the defendant excepted and the exception was allowed.

Whereupon the witness answered, well, he asked me how it would be for him to go back there, and I answered, if you are making a good living here and trying to honest you had better stay where you are.

(Testimony of E. A. Putnam.)

Q. What was the rest of the conversation, if any?
Same objection, ruling and exception.

A. Well, it was about the horses he brought down.
I asked him what prices he got for them, and so on.

Q. Horses he had where?

A. Horses he fetched down in 1901.

Q. In 1901 or 1902? A. In 1899.

Q. What horses were they?

A. They were the horses he got of Mr. Barnard.

Q. This same defendant? A. Yes, sir.

Q. Just tell the jury about that, please.

A. About the horses?

Q. Yes; just what you know; not what anybody
told you, state the facts.

A. Well, he was working for Barnard and got
those horses and brought them down here to sell;
there were 17 head of them passed through the gate,
going down the hill to my brother's ranch.

Q. When was that?

A. July, about the 17th in the year 1899. These
horses were at Mr. Barnard's at the time, I counted
them as they went by; I know they were Barnard's
horses because I had seen him riding around there
breaking them, riding them around the range and
gathering up the horses—he fetched the horses to
Greenville, at least that is what he said, he might

(Testimony of E. A. Putnam.)

have sold some along the road or traded them off for something.

Q. Was there anything said in any of the conversations you had, did you converse with Watson about that time?

Q. What was the fact about their saying anything at that time about the ranch.

Same objection, as incompetent, not in any way bearing upon the defendant and hearsay. Objection overruled and defendant excepted.

Whereupon the witness answered, he said he wanted to go back and prove up.

Q. Did he say why?

Same objection, ruling and exception.

A. He said parties wanted him to go back and prove up.

Q. Did he say why?

Same objection, ruling and exception.

A. He said parties wanted him to go back.

Q. Whom did he say wanted him to go back?

Same objection, ruling and exception.

A. He had reference to Mr. Hendricks.

Q. And did he give you any reason as to why he would not go back?

Same ruling to objection and exception.

A. He didn't think the people wanted him, I guess.

(Testimony of E. A. Putnam.)

Q. Didn't he tell you why?

A. Same objection, ruling and exception.

A. No, he didn't tell me exactly.

Q. Did he give you any reason why?

Same objection, ruling and exception.

A. Well, all the reason was that there were some horses run off that spring and he was hired to do it and he didn't suppose the settlers wanted him to go back.

Whereupon the counsel for the defendant moved to strike out the conversation between the witness and Watson on the ground that the testimony is incompetent and hearsay against this defendant.

Whereupon the Court asked, "The conversation was all with Watson?"

A. Yes, sir.

The COURT.—Its relevancy may be as to the bearing on the question of residence upon the claim by Watson.

Whereupon the Court ruled that for that purpose it was competent and the defendant excepted and the exception was allowed.

And be it further remembered that during the trial of said cause and as a part of the direct case of the Government one John Morgan was called by the Government as a witness, who testified that he had lived

(Testimony of E. A. Putnam.)

in Wheeler county and that he took up a claim in that county.

Whereupon, he was shown what purported to be his final proof paper upon said claim, which was as follows:

Government's Exhibit "A."

4-369.

**HOMESTEAD PROOF—TESTIMONY OF
CLAIMANT.**

John M. Morgan, being called as a witness in his own behalf in support of homestead entry No. 12, 762, for Lot 4, Sec. 30, Lots 1, 2 and 3, Sec. 31, T. 5 S., R. 20 E., W. M., testified as follows:

Q. What is your name, age and postoffice address?

A. John M. Morgan, age 26; Fossil, Oregon.

Q. Are you a native-born citizen of the United States, and if so, in what state or territory were you born?

A. Yes, Illinois.

Q. Are you the identical person who made homestead entry No. 12762, at the Dalles, Oregon, land office on the — day of —, 1903, and what is the true description of the land now claimed by you?

A. Lot 4, Sec. 30, Lots 1, 2, and 3, Sec. 31, T. 5 S., R. 20 E., W. M.

(Testimony of E. A. Putnam.)

Q. When was your home built on the land, and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof?)

A. Nov. 1902; established residence in house at same time. 12 x 14 box house, shingle roof, one door and one window, good floor, stovepipe through tin in roof, all fenced with two wires, good spring water, 35 acres plowed, total value of improvements \$350.00.

Q. Of whom does your family consist; and have you and your family resided continually on the land since first establishing residence thereon? (If unmarried state the fact.)

A. Myself and wife, yes.

Q. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent did your family reside upon and cultivate the land during your absence? A. None.

Q. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

A. Thirty-five acres cultivated; raised two barley crops, last year and this, pastured my stock on place—two horses and 2 cows.

(Testimony of E. A. Putnam.)

Q. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

A. No.

Q. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality and for what purpose it is most valuable?

A. Grazing and farming, mostly grazing.

Q. Are there any indications of coal, salines, or minerals, of any kind on the land? (If so describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes?)

A. No.

Q. Have you ever made any other homestead entry? (If so, describe the same.)

A. No.

Q. Have you sold, conveyed, or mortgaged any portion of the land, and if so, to whom and for what purpose?

A. No.

Q. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

A. No.

Q. Describe by legal subdivisions, or by number, kind of entry, and of office where made, any other

(Testimony of E. A. Putnam.)

entry or filing (not mineral) made by you since Aug. 30, 1890.

A. Homestead entry N. $\frac{1}{2}$, SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$; Sec. 1, T. 6 S., R. 19 E., W. M., which I abandoned soon after filing and relinquished in spring of 1900.

(Sign plainly with full Christian name.)

JOHN MORGAN.

(In case the party is of foreign birth, a certified transcript from the court records of his declaration of intention to become a citizen or his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five year) homestead cases.)

I hereby certify that the foregoing testimony was read to the claimant before being subscribed and was sworn to before me this 19th day of September, 1904, at my office at Fossil, Wheeler county, Oregon.

(See note below.)

JAS. S. STEWART,

U. S. Com. for Oregon.

NOTE.—The officer before whom the testimony is taken should call attention of the witness to the following section of the Revised Statutes and state to him that it is the purpose of the Government, if it be ascertained that he testified falsely, to prosecute him to the full extent of the law.

(Testimony of E. A. Putnam.)

TITLE LXX-CRIMES CHAPTER 4.

Sec. 5392. Every person, who having taken an oath before a competent tribunal, officer, or person, in any case in which the law of the United States authorized an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate, by him subscribed is true, willfully and contrary to such oath, states or subscribes, any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States, until such time as the judgment against him is reversed. (See Sec. 1750.)

FINAL AFFIDAVIT REQUIRED OF HOMESTEAD CLAIMANT'S BLANK.

(4-369.)

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Robert V. Zachary, being called as a witness in support of the homestead entry of John M. Morgan for Lot 4, Sec. 30, Lots 1, 2, and 3, Sec. 31, T. 5 S. R., 20 E., W. M., testifies as follows:

(Testimony of E. A. Putnam.)

Q. What is your name, age and postoffice address?

A. R. V. Zachary, age 53, Fossil, Oregon.

Q. Are you well acquainted with the claimant in this case and the land embraced in his claim?

A. Yes.

Q. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

A. No.

Q. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land.

A. Grazing and farming; mostly grazing land.

Q. When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

A. In the fall of 1902, established residence at that time. I live six miles from settler, my stock ranges round his place. He is one of my nearest neighbors.

Q. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

A. Yes.

Q. For what period or periods has the settler been absent from the land since making settlement, and

(Testimony of E. A. Putnam.)

for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence? A. None.

Q. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

A. Thirty-five acres, raised two grain crops—1903 and 1904.

Q. What improvements are on the land, and what is their value?

A. A good lumber house 12 x 14 feet, shingle roof one floor and a window, good floor; stovepipe goes through tin roof; all fenced with two wires, good spring water; total value of improvements about \$300.00

Q. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.) A. No.

Q. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

A. Not that I know of.

(Testimony of E. A. Putnam.)

Q. Are you interested in this claim, and do you think the settler has acted in entire good faith in perfecting this entry? A. No. Yes.

ROBERT V. ZACHARY.

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was sworn to before me this 19th day of September, 1904, at my office at Fossil, in Wheeler county, Oregon.

(See note on fourth page.)

JAS. S. STEWART,

U. S. Com. for Oregon.

(The testimony of witness must be taken at the same time and place, and before the same officer, as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistake in dates, description of land or otherwise.)

(4-369.)

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Coe D. Barnard, being called as witness in support of the homestead entry of John M. Morgan, for Lot 4, Sec. 30, Lots 1, 2 and 3, Sec. 31, T. 5 S., R. 20 E., W. M., testified as follows:

Q. What is your name, age, and postoffice address?

(Testimony of E. A. Putnam.)

A. Coe D. Barnard, age 31, Fossil, Oregon.

Q. Are you well acquainted with the claimant in this case and the land embraced in his claim?

A. Yes, sir.

Q. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business? A. No.

Q. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land. A. Grazing and farming.

Q. When did claimant settle upon the homestead and at what date did he establish actual residence thereon?

A. About November, 1902; established residence in house at that time. I live about eight miles from settler, and my livestock ranges around his place, which I frequently have occasion to pass.

Q. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried state the fact.) A. Yes.

Q. For what period or periods has the settler been absent from the land since making settlement, and for what purposes; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence? A. None.

(Testimony of E. A. Putnam.)

Q. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

A. About thirty-five acres, two seasons—grain, 1903 and 1904.

Q. What improvements are on the land, and what is their value?

A. Lumber house, 12 x 14 feet, shingle roof, one door and one window, good floor, all fenced with 2 wires fence; stovepipe goes through tin in roof of house, good spring water, total value of improvements, \$300.00

Q. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

A. No.

Q. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

A. Not that I know of.

Q. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

A. No. Yes.

COE D. BARNARD.

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was

(Testimony of E. A. Putnam.)

sworn to before me this 19th day of September, 1904,
at my office in Fossil, Wheeler county, Oregon.

JAS. S. STEWART,

U. S. Com. for Oregon.

(See note on fourth page.)

(The testimony of witnesses must be taken at the same time and place, and before the same officer, as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, descriptions of land, or otherwise.)

And said witness testified that the said paper bore his signature, that he did not know when he signed it, but that he knew what it was and that it was his proof on his homestead, the one he had taken up.

Whereupon he was asked the following question:

Q. Whereabouts?

To which the defendant objected as immaterial and incompetent.

Whereupon the Court asked the District Attorney, "what is the purpose," to which Mr. Bristol answered, "the purpose is to show—we offer to show by this witness that he took a homestead and that Coe D. Barnard was his witness.

Whereupon the objection was overruled and the defendant excepted and his exception was allowed.

(Testimony of E. A. Putnam.)

Whereupon Mr. Bristol stated, "At the time the witness proved up, C. D. Barnard was one of the witnesses, at that time we will show that this witness never had resided and never did reside on that claim, we will show it as a similar act.

Whereupon the defendant objected as incompetent and immaterial, and tended to prejudice the defendant and in no way bearing on the issue in this case, but the objection was overruled and the defendant excepted.

Whereupon the question was asked of said witness:

Q. What is the fact, Mr. Morgan, as to who your witnesses were at the time you made this purported proof?

Same objection, and that it was not the best evidence, whereupon the Court ruled that the best evidence was the paper itself, whereupon the paper purporting to be said final proof was offered by the Government (said paper hereinbefore set forth), for the same purpose as hereinbefore set forth, to which the defendant objected as immaterial and incompetent and tending to drag in other issues prejudicial to the defendant and not connected in any way with the charge against the defendant.

But the objection was overruled and the defendant excepted, and his exception was allowed, and said

(Testimony of E. A. Putnam.)

document was thereupon received in evidence and marked Government's Exhibit "A."

Whereupon the witness was asked the following question by the Government:

Q. Now, as to the homestead, Mr. Morgan, that is covered by Government's Exhibit "A," which you have identified, tell the Court and jury as to what is the fact as to whether or not you ever established an actual residence upon it, ever cultivated it or actually continued to reside upon it for the period set forth in this proof.

To which there was the same objection, ruling and exception, and the witness answered:

A. No, I didn't live on it—I did not cultivate it.

Whereupon, upon cross-examination, witness testified that he guessed the proof was read over to him, that he did not know whether it had or not, that he might have read it, he didn't remember and didn't remember it being read to him by anybody but it might have been, that he would not swear it was, that he guessed he swore to something, that he knew he did, that he swore to it.

Q. You were sworn to this, then, were you?

And in answer to the question, "When was your house built on the land, when did you establish actual residence thereon, describe said house and other improvements that you placed on the land and give

(Testimony of E. A. Putnam.)

the total value thereof, did you answer, “in November, 1902, established residence in the house at the same time, 12 x 14, a box-house, shingle roof, one door and two windows, a good floor and stovepipe through the roof, board fence of two wires, spring water, 35 acres plowed, total value of improvements, \$350”; did you answer that and swear to it?

A. I don't remember whether I did or not.

Q. Now, in answer to this question, “How much of this land have you cultivated this season and how many seasons have you raised crops thereon,” and did you answer “35 acres cultivated, raised two barley crops last year and pastured my stock on the place, two horses and two cows,” did you answer that way?

A. I guess I answered it that way, if it is on the paper I must have sworn that way.

Q. You made the answers down on the paper?

A. I guess I did.

Q. And swore to them? What business were you in up there?

A. I was not in any particular business.

Q. You weren't in any business? A. No.

Q. What were you doing?

A. Well, I was living in Fossil.

Q. What was you doing to make a living?

(Testimony of E. A. Putnam.)

A. I didn't say what I was doing to make a living.

Q. What was you doing to make a living?

A. Well, I was gambling a little once in a while.

Q. Gambling to make a living?

A. Not particularly, I didn't have to, no.

Q. Were you doing anything else? A. Yes.

Q. What else?

A. Well, I was painting quite a bit.

Q. What?

A. Painting, house painting—I don't know how much of the time, a good bit of the time, when I could not make any money gambling, well, I went out and painted a house.

Q. And were you ready to swear to anything anybody asked you? A. No.

Whereupon on redirect examination counsel for government asked the following question:

Q. I notice question 12, "Have you sold, conveyed, or mortgaged any portion of the land, and if so to whom, and for what purpose," and I see the answer is written, no. At the time you made your proof what is the fact as to your having any agreement as to your claim?

To which the defendant objected as immaterial and incompetent, and because there was no allegation in

(Testimony of E. A. Putnam.)

the indictment that there was any perjury or anything wrong in relation to the matter of any conveyance of the land, but the Court overruled the objection, and held the testimony relevant and competent, as tending to show system, knowledge, and intent on the part of the defendant, to which ruling the defendant then and there excepted, and the exception was allowed.

The witness answered, "Well, I had taken the claims for the Butte Creek Company."

Q. What Butte Creek Company?

Same objection, ruling and exception.

A. The Butte Land, Livestock and Lumber Company.

Q. How did you come to take it for it?

Same objection and in no way connected with the matter charged against the defendant.

The COURT.—Is the defendant connected with this company?

Mr. BENNETT.—Not in the slightest, your Honor.

Objection overruled, to which ruling of the Court the defendant by his counsel then and there excepted, and the exception was then and there allowed.

Whereupon the witness answered:

A. Well, Mr. Zachary asked me if I would take it up and that is how I came to take it up.

(Testimony of E. A. Putnam.)

Whereupon the defendant moved to strike out the witness' answer and withdraw it from the jury as incompetent, and immaterial, but the objection was overruled and the defendant excepted and the exception was allowed, whereupon the Government moved to expunge from the record all matter concerning the man Zachary and the Court said "let it go out."

There was no testimony offered in the case tending to show that the defendant Barnard was a stockholder or in any other way interested in the Butte Creek Company or Butte Land, Livestock and Lumber Company, and thereafter the witness, James S. Stewart was called by the Government as a part of its direct case and shown Government's Exhibit "A," hereinbefore referred to, and also asked to look at it and state whether or not he recognized it, to which the defendant objected as incompetent, immaterial and hearsay, same ruling and exception.

A. It is the homestead proof made by John Morgan before me.

Q. Does it show the accompanying testimony aduced from his witnesses in reference to the same matter?

Same objection, ruling and exception.

A. Yes, sir.

(Testimony of E. A. Putnam.)

Q. State who the witnesses were who appeared before you at the time and if not at the same time, at about the same time in connection with the matter.

Same objection, ruling and exception.

A. One is Robert Zachary and one is Coe Barnard.

Q. Inform the jury as to what the fact is as to whether the Coe Barnard is the same Coe Barnard, the defendant in this case.

Same objection ruling and exception.

A. Yes, sir.

Q. Who signed it?

Same objection, ruling and exception.

A. Mr. Barnard.

And be it further remembered, that after the Government had rested its case, JAMES STEWART was called as a witness in behalf of the defendant and testified as follows:

Direct Examination.

Q. You have already been sworn?

A. Yes, sir.

Q. You were a witness for the Government here?

A. Yes, sir.

Q. How long have you lived in the Fossil country?

A. Sixteen years.

Q. Are you acquainted with Coe Barnard?

(Testimony of James Stewart.)

A. Yes, sir.

Q. How long have you known Coe?

A. I have known him for a long time.

Q. Do you know what his general reputation in that community has been for truth and veracity?

A. I do.

Q. What has it been, good or bad?

A. It has been good.

Cross-examination.

Q. Do you know where Barnard has lived during all this time? A. Yes, sir.

Q. Where? A. In that Fossil neighborhood.

Q. What do you mean by the Fossil neighborhood, describe it more particularly to the jury?

A. Part of the time in town and part of it on his ranch.

Q. Whereabouts is that ranch?

A. A few miles west of Fossil.

Q. How many?

A. About three, I should think; I am not sure about it.

Q. Is that down, the place you mean down next place known as the J. M. Barnard place on Butte Creek? A. I could not say as to that.

Q. How do you fix the place where Barnard lived?

(Testimony of James Stewart.)

Do you know the section, township and range Mrs. Barnard pointed out as the northwest quarter of section 25, township 6 south, range 20 east?

A. I would not be sure about the section.

Q. Could you tell by looking at the map whether that was the place he lived at?

A. All I know of where he lived at is I have been down to the Barnard place about two times in my life.

Q. How many times? A. Two times.

Q. Do you know how to get there?

A. Down Butte Creek.

Q. Down Butte Creek all the way?

A. You could leave the road a little, sir.

Q. Where did you strike Barnard's place?

A. It is right on the creek.

Q. At what point?

A. What do you mean by at what point?

Q. Do you know here Jim Barnard's homestead used to be? A. No, sir.

Q. Do you know where Will Lakey lived?

A. No, sir.

Q. Do you know where the Winchester place is?

A. No, sir.

Q. Do you know where the old Connell place used to be? A. The old which?

Q. Connell place? A. No, sir.

(Testimony of James Stewart.)

Q. If shown a map, could you point out the place on Butte Creek that you understand to be the Barnard home that you visited?

A. I think I could come very close to it.

Q. I show you a plat of township 6, south range 20 east, and ask you to look at it and point out the place where Coe D. Barnard resided if you can?

A. I cannot pick it out on that.

Q. What say?

A. I cannot pick it out on this; I could come within a mile or two of it there.

Q. Well, whereabouts is it?

A. Well, it is somewhere on the east side of this plat here, and not very far from the south side of it.

Q. Well, Mrs. Barnard pointed it out as in the northwest quarter of section 25, shown upon that plat, which you hold. Can you state whether or not from your knowledge of the situation that is correct or incorrect? A. Some part of section 25?

Q. Yes, some part of section 25 east.

A. I could not say—I am asking you?

Q. I don't know anything about it. That is what I understand one of the witnesses here testified to?

A. I could not say whether it was in section 25 or not; it is not very far from that.

Q. What is that?

A. It cannot be very far from that.

(Testimony of James Stewart.)

Mr. BENNETT.—I think we can agree on that; we will have no disagreement as to where the place is, if we have a chance to get a map and agree.

Mr. BRISTOL.—Can we agree on where the Barnard place is on the map?

Q. Can you state whether or not it was in township 6 south range 20 east, on Butte Creek?

A. Yes, sir, I am pretty sure it is there.

Q. What?

A. I am pretty sure it is there.

Q. And if Mrs. Barnard fixes it in section 25 in that township on Butte Creek, do you deem that to be correct or incorrect as the fact may be?

Mr. BENNETT.—That is objected to.

Question withdrawn.

Mr. BRISTOL.—I am willing to take Mrs. Barnard's testimony as to its being the northwest quarter of section 25, the old Connell place.

Q. How long have you known Mr. Barnard?

A. Sixteen years.

Q. And during that time where did he live?

A. He lived either in Fossil or down Butte Creek.

Q. Either in Fossil or down Butte Creek?

A. Yes, sir.

Q. I show you a paper and ask you to look at it and state whether you have ever seen it before?

(Testimony of James Stewart.)

A. Yes, sir.

Q. What is it?

A. It is Coe Barnard's final proof.

Q. For what? A. For his homestead.

Q. For what homestead?

A. The homestead he proved up on before me.

The foregoing was the whole of his direct-examination and cross-examination to where witness was asked the following question:

Q. What homestead do you know?

To which the defendant objected as not proper cross-examination, as incompetent and immaterial and irrelevant, whereupon the Court asked the district attorney, "What do you propose to show," and Mr. Bristol for the Government stated, "I propose to show matter affecting the truth and veracity of the defendant Coe Barnard, nothing more or nothing less.

The COURT.—Can you show this by a specific instance?

A. I propose to show by this witness that Coe D. Barnard, before this witness, as a United States Commissioner, swore to the fact that he had continuously resided on a homestead other than the place he did reside, and thereupon the Government asked that the ruling upon the question be postponed until after ad-

(Testimony of James Stewart.)

jourment for lunch, and when the Court had reconvened, the Court overruled the objection, to which ruling of the Court the defendant by his counsel then and there in open court excepted and thereupon the witness testified:

A. The homestead described here (indicating the final proof which had been shown him).

Thereupon the following question was asked:

Q. What is the fact, Mr. Stewart, what is the fact as to whether or not you have heard or know whether Coe D. Barnard on or about the 23d day of June, 1905, before you as United States Commissioner gave any testimony under oath then in the matter before you.

Whereupon the defendant objected to that part of the question in which the witness is asked to state as to what he knows of his own knowledge, but the objection was overruled and the defendant excepted and his exception was allowed, and thereupon the final proof paper which had been shown to the witness was offered in evidence, and was in words and figures as follows:

To which the defendant objected as incompetent, immaterial, and not proper cross-examination, but the objection was overruled and the paper admitted in evidence.

(Testimony of James Stewart.)

To which ruling the defendant then and there excepted and his exception was allowed.

The said Coe D. Barnard was not a witness in the case.

And be it further remembered, that after the evidence was in and at the proper time under the rules of the Court, the defendant asked the Court to instruct the jury as follows :

“If the defendant thought that going upon the land and staying once in six months was a continuous residence within the meaning of the law, you should consider that fact in passing upon his good faith, and if you have a reasonable doubt as to what he believed upon the subject you should give him the benefit of that doubt.”

But the Court refused to give said instruction in the language asked for, or at all, except as covered in the general charge as hereinafter set forth.

To which refusal and modification the defendant excepted and his exception was allowed :

Thereupon, the defendant during said trial and at the proper time required by the rules of the Court, requested the Court to instruct the jury as follows :

“A homestead claimant has a right to lease or let a part of his claim to other parties for cultivation and doing so before he proves up is no violation of the homestead law.”

But the instruction was refused in the language requested and was not given except as given in the general charge, hereinafter set forth.

To which refusal and modification, the defendant excepted and his exception was allowed.

Thereupon, the defendant during said trial and at the proper time required by the rules of the Court, requested the Court to instruct the jury as follows:

“The cultivation by a tenant or agent in good faith, might be a sufficient cultivation within the meaning of the law.”

But the instruction was refused in the language requested and was not given except as given in the general charge, hereinafter set forth.

To which refusal and modification, the defendant excepted and his exception was allowed.

Thereupon, the defendant during said trial and at the proper time required by the rules of the Court, requested the Court to instruct the jury as follows:

“An enclosure made by joining a fence to a bluff is a fencing within the meaning of the law.”

But the instruction was refused in the language requested and was not given except as given in the general charge hereinafter set forth.

To which refusal and modification, the defendant excepted and his exception was allowed.

Thereupon, the defendant during said trial and at the proper time required by the rules of the Court, requested the Court to instruct the jury as follows:

“In this case I charge you that the indictment is insufficient to sustain a verdict of guilty and you should find the defendant not guilty.”

But the Court refused to give said charge.

To which refusal the defendant excepted and his exception was allowed.

Thereupon, the defendant during said trial and at the proper time required by the rules of the Court, requested the Court to instruct the jury as follows:

“You should not permit any clamor or public opinion, real or imagined, to prevent you from giving the defendant a fair trial, and the benefit of all reasonable doubt.”

But the Court refused to give said charge.

To which refusal the defendant excepted and his exception was allowed.

Thereupon, the defendant during said trial and at the proper time required by the rules of the Court, requested the Court to instruct the jury as follows:

“No mere carelessness or recklessness on the part of the defendant in giving his evidence in the Watson final proof will sustain the charge of perjury in this case, but it must be made to appear beyond a reasonable doubt that his statements were willfully and in-

tentionally false and that he did not believe them to be true.”

But the Court refused to give said instruction in the language requested and it was not given at all except as covered by the general charge hereinafter set forth.

To which refusal and modification the defendant excepted and his exception was allowed.

Thereupon, the defendant during said trial and at the proper time required by the rules of the Court, requested the Court to instruct the jury as follows:

“You have no right to consider the homestead proof of Barnard, upon his own land as bearing in any way upon his honesty and integrity or truth and veracity, you can only consider it as bearing upon the credibility of the witness Stewart.”

But the Court refused to give said instruction in the language requested, or at all, except as covered in the general charge hereinafter set forth.

To which refusal and modification the defendant excepted and his exception was allowed.

And thereafter, the defendant asked the Court to instruct the jury as follows:

“You cannot find the defendant guilty of perjury in the matter of the statement that there was about 2 acres in cultivation.”

But the Court refused to give said instruction and to its refusal the defendant then and there excepted and his exception was allowed.

And thereafter, the defendant asked the Court to instruct the jury as follows :

“You cannot find the defendant guilty in this cause on account of any falsity, real or supposed, as to the statement in the proof that there was a house or fencing on the land.”

But the Court refused to give said instruction and to its refusal the defendant then and there excepted and his exception was allowed.

Thereupon, the Court charged the jury as follows :

Charge of the Court to Jury.

Gentlemen, I will be as brief as I consistently can.

There are certain legal principles that are applicable in the trial of all criminal cases. It is incumbent upon a Court to say them before a jury, although I doubt not that your own experiences in courts of justice have kept you very well informed as to what most of these fundamental principles are.

We have entered upon the last stage of the trial of an important criminal case. I have observed that the close attention that you have paid to the evidence is prompted by a conscientious desire and a purpose to do your duty by arriving at a verdict after a fair, impartial and candid consideration of the testimony

as introduced by the Government against the defendant, and by the defendant in behalf of himself.

A great many men laugh or rail at jury trials, but there is no institution in the history of the Anglo-Saxon countries that has stood the tests so well of centuries of time as jury trial to determine the question of the guilt or innocence of a man charged for a crime. You come together, some of you perhaps for the first time in your lives sitting as jurors, taken from the walks of commercial life, perhaps taken from the factory, perhaps taken from the farm, perhaps some of you retired with no activities in business life, some of you tradesmen, some of you wealthier men, and you listen to both sides of a case; you hear the law which is but the enunciation of the reason of centuries of the thought of learned men in applying reason and truth to the experiences of every day affairs, and you retire to your jury room and deliberate, and there the law in its wisdom says that all twelve of you must concur in any verdict rendered, and when you have considered the evidence and reached a conclusion, it is your duty to declare that conclusion without fear or favor and bring it into court in the form of a verdict.

You will approach the consideration of this case mindful of certain principles. First, there is the presumption of innocence, which is accorded to every defendant charged with crime under our system of

laws; he is presumed to be innocent until the Government has established his guilt by competent evidence beyond a reasonable doubt.

Learned men have defined a reasonable doubt. I would not attempt to place before you any original definition of it, but am content to give it to you as I have given it to juries many times before in the trial of important cases, by asking you to remember the language of Chief Justice Shaw of Massachusetts, who thus defined it to a jury in the great murder case of the Commonwealth vs. Webster many, many years ago.

A reasonable doubt, he said, is not such a doubt as any man may start by questioning for the sake of a doubt, nor a doubt suggested or surmised without foundation on the evidence or testimony; it is such a doubt only as in a fair, reasonable effort to reach a conclusion upon the evidence, using the mind in the same matter as in other matters of the highest importance, prevents the jury from coming to a conclusion in which their minds rest satisfied; if so using the mind and considering all the evidence produced it leads to a conclusion which satisfies the judgment and leaves upon the mind a settled conviction of the truth of the fact, it is the duty of the jury so to declare that fact by their verdict. It is possible always to question any conclusion derived from testimony, but such questioning is not what is a reasonable

doubt; it is that state of the case, which, after an entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

You will also remember, gentlemen, that the function of the jury is to judge of the credibility of witnesses; that is exclusively the function of the jury; the judge may express his opinion; I think it has even been held that he may go so far as to tell a jury that he doubts the truth of any witness who has testified, but that is merely his opinion. You, and you alone, are to judge of the credibility of the witnesses, uninfluenced by any opinion that anybody may have upon the question of the credibility of testimony.

Now credibility comprehends the truth or falsity of testimony. You see a witness come upon the stand, the presumption of law is that he is telling the truth; but that presumption may be overcome by his manner upon the witness stand or by evidence which affects his reputation for truth and veracity, or by proof that he has made contradictory statements at different times, or by other evidence which assails the credibility of his testimony. And there is another privilege that belongs to a jury. If a jury believe that any witness has willfully sworn falsely to any material matter, they are at liberty to disregard the

entire testimony of such witness except in so far as it may be corroborated by other credible evidence.

Now, let us move on and examine for a minute the precise charge against this defendant Barnard and the nature of that charge. The indictment is drawn under the perjury statute of the United States, which defines perjury in this way :

“Every person, who, having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes to any material matter which he does not believe to be true, is guilty of perjury.”

The oath that this defendant is alleged to have taken was before the United States Commissioner, who was a witness here—Steward, his name was.

The law authorizes Steward as a United States Commissioner to take affidavits and proofs in respect to land entries and land proofs; so that, upon that question you will have no trouble as to the competency of authority of Steward to administer an oath in a land matter; he had that under the law.

It is also, I think, very clearly in evidence before you that this defendant did take an oath before the United States Commissioner. The final proof of

Watson, together with the proof of the defendant Barnard as a witness, which appears to be duly subscribed and sworn to before the Commissioner, is in evidence, and you will have no trouble, I take it, upon that point.

You will then advance to the essential question as to whether or not the defendant Barnard willfully, and contrary to the oath that he had taken, or took before the Commissioner, stated or subscribed and swore to, any material matter as alleged in the indictment against him, which he did not believe to be true.

Now, let us take the indictment and see what the particular matter referred to in it is.

It is generally charged that when the Commissioner Steward took the proof of Watson in support of his homestead entry for the south half of the northeast quarter, the southeast quarter of the northwest quarter and the northeast quarter of the southwest quarter of section 11, township 6, south, range 19, east, upon which Watson had made his filing at the Land Office at The Dalles on the 23d of June, 1904, came in person before Steward, the Commissioner, and testified; it is charged that it then and there became and was material that Steward, the Commissioner, should be and become informed from and by the testimony whether Watson had settled upon, and resided upon, and improved and cultivated the lands described as required by the homestead laws of the United States;

and if so, when such settlement and residence began and how long it continued, what was its character and whether it commenced in the year 1898 and continued for five years thereafter, and especially whether Watson had resided continuously on the said land for a period of five years since first establishing residence thereon, and for what period or periods Watson had been absent from the land since making settlement thereon, and for what purpose he was so absent and whether Watson had cultivated the land and how much thereof he had cultivated, and for how many seasons he had raised crops thereon, and what improvements were on the land and what was their value. It is charged that the defendant Barnard was sworn and made oath before the Commissioner, and to prevent the Commissioner or register and receiver of the land office at The Dalles from knowing the true facts and circumstances pertaining to the settlement and residence of Watson upon, and his cultivation and improvement of, the said lands so described in and by his testimony so subscribed, did willfully corruptly and falsely and contrary to his oath swear as to the material matters set forth, which he did not then believe to be true. The testimony which the indictment alleges the defendant Barnard gave and subscribed, was and is in the following words and figures. I would say gentlemen, that Miss Fleming did not have time to compare this with the indictment,

and if there be any little clerical omission I would be glad if you will call my attention to it. I am prepared to say that Miss Fleming is so very accurate that there probably is not, but still there might be.

“HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Coe D. Barnard, being called as a witness in support of the homestead entry of Charles A. Watson for the south half of the northeast quarter, the southeast quarter of the northwest quarter, and northeast quarter of southwest quarter of section 11, township 6 south, R. 19 E., W. M. testified as follows:

Question 1. What is your name, age and postoffice address?

Answer: Coe D. Barnard, age 31 years, Fossil, Oregon.

Question 2: Are you well acquainted with the claimant in this case and the land embraced in his claim?

Answer: Yes.

Question 3: Is said tract within the limits of an incorporated town, or selected site of a city or town, or used in any way for trade or business?

Answer: No, sir.

Question 4: State specifically the character of this land, whether it is timber, prairie, grazing, farming, coal or mineral land?

Answer: No, sir; grazing land, rough and mountainous.

Question 5; When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Answer: In the spring of 1898, established residence at the same time.

Question 6: Have claimant and family resided continuously on the homestead since first establishing residence thereon? If settler is unmarried, state the fact.

Answer: Yes, except as stated below, he is unmarried; I live about eight miles from settler's place. In riding for my stock I frequently ride past his place and stop at his house.

Question 7: For what period or periods has the settler been absent from the land since making settlement, and for what purpose, and if temporarily absent did claimant's family reside upon and cultivate the land during such absence?

Answer: He made a trip to the Willamette Valley in July, 1902, for the benefit of his health and returned in October, 1902.

Question 8: How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Answer: About two acres. He raised a crop on it every year since 1898. The rest of the land is too

steep, rough and rocky for cultivation. He pastures about 25 head of his horses on the place.

Question 9: What improvements are on the land and what is their value?

A. A lumber house 12 by 16, lumber roof, lumber floor, one room ceiled and papered, good spring water, all fenced with three wires; total value of improvements about \$250; one door and one window.

Question 10: Are there any indications of coal, salines or minerals of any kind on the homestead; if so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.

Answer: No.

Question 11. Has the claimant mortgaged, sold or contracted to sell any portion of said homestead?

Answer: Not to my knowledge.

Question 12. Are you interested in this claim and do you think the settler has acted in entire good faith in perfecting his entry?

Answer: No (that is as to the interest in the claim). Yes (that is, as to the question whether he thinks the settler has acted in entire good faith in perfecting the entry).

Sign plainly with full Christian name.

COE D. BARNARD.

I hereby certify that the foregoing testimony was read to the witness before being subscribed, and was

sworn to before me this 23rd day of June, 1904, at my office in Wheeler county, Oregon.

JAMES S. STEWARD,

United States Commissioner for Oregon.”

Remembering, gentlemen, that this is the matter set forth in the indictment.

The pleading then charges that in truth and in fact Watson, at the time Barnard so subscribed and swore to the truth of this testimony just stated, as he, Barnard, then and there well knew, had never settled or resided upon and improved or cultivated the land so described as required by the homestead laws of the United States, or in any manner whatever, and had not settled upon and established actual residence thereon in the year 1898 or at any other time, and had not resided continuously on the land, or any part thereof, since first establishing residence thereon, except when he made the trip to the Willamette Valley in July, 1902, for the benefit of his health, and had not returned to said land and re-established his actual residence thereon in October, 1902, or at any other time in said, or in any other year, and had not raised a crop on said land every year from 1898 to 1904, or during any of said years, and had not cultivated two acres of said land. And so the grand jury charge that the defendant Barnard, in this manner and form, in and by his testimony upon his oath, is charged with having willfully, unlawfully,

and contrary to his oath, stated and subscribed to material matters which he then did not believe to be true, and thereby did commit wilful and corrupt perjury.

Bearing in mind the definition of perjury as I gave it to you from the statute of the United States, it is not necessary that the Government prove to you not only what the defendant swore to was in fact untrue, but that he did not believe it to be true. This involves two matters: first, that Watson never had settled or resided upon, or improved or cultivated the land described in his homestead entry as required by law, and had not settled upon and established actual residence thereon in the year 1898, or at any other time, and had not resided continuously on the land since first establishing residence thereon, and had not raised a crop on the land every year from 1898 to 1904, or during any of said years, and had not cultivated it. That is the first proposition. The second is, it must be established that Barnard knew, or believed, when he gave his testimony to the final proof of Watson, that Watson had not settled or resided upon, or improved the land as required by the homestead laws of the United States, or in any manner, and had not settled upon or established actual residence thereon in the year 1898, or at any other time; and had not resided continuously on the land described, or any part thereof, as required by law since

first establishing residence thereon except when he made a trip to the Willamette Valley in July, 1902, for the benefit of his health or otherwise or at all; and had not returned to the land and re-established his actual residence there in October, 1902, or at any other time in said year, or in any other year; and had not raised a crop on said land every year from 1898 to 1904, or during any of said years, and had not cultivated two acres of said land.

There necessarily is involved, gentlemen, in the consideration of these questions that I have just stated to you were essentially involved, a consideration of the requirements of the homestead law of the United States.

Watson claimed under the homestead law; the defendant Barnard was one of his witnesses to his final proof that he had complied with the homestead law. Now it is hardly necessary to enter at great length upon the provisions of the homestead laws of the United States; those of us who have lived in the west for many years, I am sure, that it was designed by the Congress of the United States in the passage of that law that men might make homes on the public domain, that the unsettled lands of the United States might be settled upon, cultivated, resided upon, and might become the homes of settlers who would take them up in good faith.

By its provision every person who is the head of a family or over the age of 21 and a citizen of the United States, or who has filed his declaration of intention to become such, shall be entitled to enter one quarter section or less, of unappropriated public lands to be located in a body in conformity to the legal subdivisions of the public lands.

Any person applying to enter land under the homestead section shall first make and subscribe before the proper officer and file in the proper land office an affidavit that he is the head of a family, or over the age of 21 years, and that such application is honestly and in good faith made for the purposes of actual settlement and cultivation, and not for the benefit of any other person or persons or corporation, and that he will faithfully and honestly endeavor to comply with the requirements of law as to settlement, residence and cultivation necessary to acquire title to the land applied for; that he is not acting as agent for any person, corporation or syndicate, in making such entry, nor in collusion with any person, corporation or syndicate to give them the benefit of lands entered, or any part thereof, or the timber thereon; that he does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself; and that he has not, directly or indirectly, made, and will not make, any agreement or contract in any way or manner, with any person or persons,

corporation or syndicate whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself, and upon filing such affidavit with the register or receiver upon payment of the fees, he shall thereupon be permitted to enter the amount of lands specified.

It is generally provided that no certificate shall be given or patent issued until the expiration of five years from the date of the entry provided for, and if at the expiration of said time or at any time within two years thereafter the person making such entry proves, by two credible witnesses, that he has resided upon and cultivated the land for the term of five years immediately succeeding the time of filing the affidavit, and makes affidavit that no part of such land has been alienated, except as specially provided, and that he will bear true allegiance to the Government of the United States, then and in such cases he will be entitled to patent.

The law of the commutation of a homestead is not material to this case. There is a law that permits a man who avails himself of the homestead law, to pay the minimum price for the quantity of land entered at any time after the expiration of fourteen calendar months at any time from the date of entry and obtain patent upon making proof of settlement, and of residence and of cultivation for such period of fourteen

months. It is not contended in this case that there was any commutation at all; it was a homestead entry where the proof was made after the expiration of five years.

Now, to establish a residence as required by the homestead law there must be combination of act and intent; the act of occupying and living upon the claim, and the intention of making the same a home to the exclusion of a home elsewhere. Inhabitaney must exist in good faith.

Now, you observe that I use the word intent. Intent is a question of fact to be arrived at by the jury in analyzing testimony, drawing inferences and deductions from testimony before them, and such external circumstances as may be capable of proof.

Good faith means nothing more nor less than honesty. As common sense men when you speak of bad faith you speak of the opposite of good faith. I take it that a sufficient definition of good faith is honesty, in respect to the public land laws; and whether or not there was good faith in this case, what the intention was—those are questions for you.

It is not a compliance with a homestead law for a man to file on a tract of land with no intention of making it his home, with no purpose of living there, with no intention of cultivating any part of it, and acquiring it for a place to reside in. Occasional visits made for a few hours or for a day or two every

six months to a claim taken up as I have just stated, where the entry is not made in good faith but solely for the purpose of attempting to comply technically with the law, do not constitute a compliance with the statute. On the other hand, if a man is really in good faith and means to establish a home for himself, and in good faith he settles upon the land and cultivates it and fixes his home there, the law will sustain him in his application and proof, even though he be absent for not more than six months from his home; such absence, however, being always with intent in good faith to return to his homestead, and being reasonably necessary to enable him to maintain himself and his family, if he has one, or he would be excused if temporarily absent on account of sickness, if the sickness was of a nature which reasonably required his absence, or on account of unavoidable casualty, or necessity occurring after he has established his home upon the land.

Now, gentlemen, I think I have touched upon the more salient features of the law that bear upon this case. I think it would simplify your labors to first take up the question of Watson's relation to the land. Was he a homesteader in good faith, and under the law? Did he honestly comply with the law as I have read its requirements to you and tried to define them? And second, did this defendant wilfully swear falsely as to the residence, cultivation and im-

provement of the place by Watson as alleged in the indictment, believing that his testimony as a witness in respect to the matters set forth in the indictment was true.

If you find these two propositions in the affirmative, that Watson was not a homesteader in good faith and did not reside upon and cultivate the land as required by law, and that this defendant willfully swore falsely in respect to the residence and cultivation and improvement of the place by Watson, believing that what he swore to was untrue, if you are satisfied with these two propositions beyond a reasonable doubt you should convict; if you are not you should acquit.

You have the original proof if you desire them. Should you want any of the exhibits in the case you are at liberty to send for them. The practice is not to deliver exhibits to a jury, unless in their deliberations they desire to have them.

You have heard the testimony, you have heard the questions and answers set forth in the indictment and as read in these proofs; you should consider them; and you also have a right to consider the question of whether or not defendant did or did not honestly believe that going upon the land once very six months was a compliance with the law. You may consider that as bearing upon the question of good faith and intent, but also consider the specific answers made to

the questions I have read, not only as to the general question of good faith but as to the particular acts that he testifies to concerning Watson's settlement and cultivation.

I will remind you that throughout the trial certain evidence was offered and permitted to be introduced under certain limitations, which the defendant requests be called to your attention, and which I do, reminding you.

You will remember that there was some evidence offered tending to show that this defendant had been connected with proofs in certain other cases where the evidence of the Government was offered for the purpose of showing there was bad faith in such other entries. The relevancy of that testimony, gentlemen, is as bearing upon the question of whether or not there was a scheme or design or system on the defendant's part in connection with the acquisition of this particular land involved in this case—not the acquisition; that is not a correct term; as to whether there was a system or design in knowing of how many proofs were being made where there may have been false swearing in making such proofs.

It is fundamental that there can be no conviction in a criminal case, except for the particular crime charged against the defendant on trial.

You could not convict the defendant, no matter how culpable you might believe him in connection

with any other entry than this Watson described in the indictment; but I repeat such evidence was offered and admitted and must be limited in your consideration to its relevancy as to the design, or intent, or knowledge, or system that the defendant may have had in doing the particular act charged against him.

You will remember also that to-day the United States Commissioner testified as to the reputation of the defendant for truth and veracity in the community in which he lived. Upon cross-examination there was a proof which had been made by the defendant upon certain land other than that upon which it is contended he made his home for a long time. The applicability of this is limited to the question of the credibility of the witness Steward in his testimony which he gave as to the reputation of the defendant, that is it is offered for the purpose of affecting the credibility of the statements made by the witness Steward.

I think, gentlemen, that that covers the main features of the law applicable to this case. If I have omitted anything, why try to think of it; for with the strain that has been upon us all for two days it is not to be wondered at that something may have been omitted.

Do you think of anything, Mr. Bristol, that you desire for the Court to suggest to the jury?

Mr. BRISTOL.—The Government has no suggestion to offer, may it please the Court.

Mr. BENNETT.—If your Honor please, I will ask an exception to the refusal of such instruction as we ask for and that were not given, and to each of them; and I think I will ask an exception to that part of your Honor's charge in which you said the jury might consider the specific answers, and which your Honor had read over to them, as being charges upon which they would not have any right to pass under the indictment.

The COURT.—Judge, I tried to limit that. Consider them as bearing upon the allegations of the land indictment. I tried to limit that several times, and of course the jury will understand that consideration is addressed to the specific matters charged in the indictment which I have recapitulated.

Mr. BENNETT.—My point was that our contention was it ought to have been limited to the matters which are alleged in the indictment; many of those answers, and there are two or three that I call your Honor's especial attention to, are not alleged to have been false.

We also desire to except to that part of your Honor's instructions in relation to the admission of the testimony as to the other final proofs being ad-

missible for the purpose of showing the design, the system, so on and so forth, as not the law of the case and misleading to the jury.

And also that part of the instructions in which your Honor instructed the jury that such testimony was admissible upon the question of knowledge.

The COURT.—I didn't hear that last; read me that, Miss Fleming.

The same was read by Miss Fleming.

The COURT.—I think I tried to make myself clear in the relevancy of that offer; but in your exception you go further than my charge, Judge. I did not tell the jury that it proved anything; I said it was offered for the purpose; whether it does or not is a question for them in these matters. Now, gentlemen, here is a blank verdict which, whatever your finding is, you will, by your foreman, sign and bring into court.

Whereupon, the jury retired to consider of their verdict, etc.

Thereupon at the close of said charge and before the jury had retired, and in the presence of the jury, the defendant excepted to that portion of the charge which was as follows:

Defendant's Exceptions to Charge of the Court to Jury.

“* * * but also consider the specific answers made to the questions I have read, not only as to the general question of good faith, but as to the particular acts that he testifies to concerning Watson's settlement and cultivation.”

Upon the ground that said instruction was not limited to the answer alleged to have been false in the indictment, and the exception was allowed.

And the defendant then and there excepted to that portion of the charge which was as follows:

“* * * but I repeat such evidence was offered and admitted and must be limited in your consideration to its relevancy as to the design, or intent, or knowledge, or system, that the defendant may have had in doing the particular act charged against him.”

Upon the ground that it was misleading and not the law of the case and the defendant also excepted to that part of the instruction in which the Court charged the jury that such testimony was admissible on the question of knowledge, and said exceptions were allowed.

*In the Circuit Court of the United States, in and for
the District of Oregon, Ninth Judicial Circuit.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

COE D. BARNARD,

Defendant.

Amendment to Proposed Bill of Exceptions.

Be it remembered that the above-entitled cause came on for trial upon the indictment upon the 8th day of August, 1906, before the Honorable William H. Hunt, United States District Judge, and a jury, duly impaneled, and during the trial of said cause and as a part of the Government's direct case, evidence was introduced tending to show that the defendant lived ten or twelve miles from the Watson place, along up Butte Creek, toward Fossil; that one of the witnesses, Stephen Matteer, first saw Watson in the summer of 1898, in June or the latter part of May, when he was leading a span of horses up the creek, and that there was nothing at that time stated by Watson as to a claim that he had in the neighborhood; that the witness had not seen him at all from that time until he had seen him in the courtroom; that this place called the Watson place adjoined the witness' east line; that there was a cabin without floor and without furniture and without stovepipe,

on the Watson place, but there was nothing around the cabin by way of improvements or cultivation, or anything that the witness had ever seen, and that the witness had never seen anybody residing there in the years 1898, 1899 and 1900; that witness had found his cow several times in the cabin; that she went in through the hole that was made for a door; that the witness never saw any evidence of habitation or settlement or cultivation about the place up to March, 1901; that he did not see the cabin in 1901 after June; that down the creek from the cabin there was a garden patch of about three-quarters of an acre, upon which garden was raised in 1901; that when he saw the cabin in June, 1901, its condition was no different than when he saw it the first time; it had no door, nor window, nor chimney in it, and that there was no evidence of any habitation in or about the cabin, that it was the same then as it was in 1898, as far as witness could see; that the garden which was there in June, 1901, was the same patch that witness had been working in previous years.

Further evidence was then introduced, considering the allegations of the indictment as to the homestead entry of Watson, supplemented with the entry papers which had been filed therefor and on which the defendant, Coe D. Barnard, appeared as a witness, and that he was the same person who appeared as a in the indictment and subscribed it under oath.

Further evidence was then introduced by the witness, Maggie Matteer, who corroborated the first witness, Stephen Matteer, that they had lived on the place next Watson's on Butte Creek for five years, or thereabouts, a good part of the time, and that on different occasions she had been down to the Watson cabin to get her cow and found her cow by looking into the cabin and finding her there; that the cabin was like a shed, roofed just one way, and there was no window nor door, with the exception of a half end which was left open for a door; there was absolutely no sign of anyone living there at all; that these conditions were as she observed them from the year 1897; that she saw C. B. Zachary working on the cabin when it was originally put up; he was sawing boards and nailing them up and putting up the cabin; that there was no garden on the place except the small garden that the Matteers raised; that there were no other signs of residence or cultivation in or about the claim that she ever saw, with the exception of the cabin as described; that she had heard of Mr. Watson filing on the place at the time he had filed and it was after that that she saw the cabin built; and to like effect so testified Edward Matteer, a son of Stephen and Maggie Matteer before mentioned; and that in October, 1901, he saw no signs whatever of anyone ever having lived upon the Watson place;

and to like effect so testified Elmer Matteer, a son of Stephen and Maggie Matteer before mentioned, and gave evidence upon the same subjects and to like effect as Stephen and Maggie Matteer; and further, that several months after the time that he had scared Watson's horse at his father's place he had been up to and seen the Watson cabin, and there was no change in its condition, and it was after that that he found the cow there.

Thereupon further evidence was introduced as a part of the Government's direct case, by one WILLIAM SHEPARD, who was called as a witness and testified that his name was William Shepard; that he lived at Mountindale, Washington County, in Oregon, about west of Portland, twenty-three miles by the wagon road from Hillsboro; that he had lived there from 1903; that he went there in the spring of 1902; that he had met Charles A. Watson, and that he had met Coe D. Barnard; that Barnard was in the courtroom; that he left Wheeler County, the Fossil country, on Friday, the 19th day of June, 1902, and went to Mountindale; that he saw Charles A. Watson around Moutaindale in 1902, hauling lumber for William Hollenbeck from a sawmill up on Dairy Creek; that he was there about two weeks hauling lumber in June or July, some time after the third of July; that after 1902 he saw him again in Portland; that before that, in 1901, Watson was running

(Testimony of William Shepard.)

a saloon at Greenville; that Greenville is between seven and eight miles from Mountindale; that was in the months of June and July, 1901; that Watson was running the saloon himself; that witness landed there about the 21st of June with some horses and left about the 15th of July; that he had talked with Watson at that time; whereupon the following questions were asked the witness and the following answers were given:

Q. Was there anything said by him with reference to a claim or anything of the kind he had up Fossil way?

A. Yes, sir; he said he had a claim up there.

Q. And did he state at that time, or in connection with that same matter while you were conversing, the reason why he didn't go back to it?

A. Well, he asked me how it would do for him to go back. I told him, I says, "If you are making a good living here and trying to be honest you had better stay where you are," something to that effect.

Q. What was the rest of the conversation, if any?

A. Well, it was about the horses that he fetched down. I asked him the price that he got for them, and so on.

Q. The horses that he had down where?

A. That he fetched down in 1899.

(Testimony of William Shepard.)

Q. What horses were they?

A. They were horses that he got from Barnard.

Q. This same defendant here? A. Yes, sir.

Q. Just tell the jury about that please.

A. About the horses?

Q. Yes; just what you know, not what anybody told you, but just tell us what the facts are.

A. Well, he was working for Mr. Barnard and he got those horses and fetched them down here to sell. There was seventeen head of them that passed through the gate going down the hill to my brother's ranch.

Q. When was that?

A. That was in July, about the 17th, 1899.

Q. Now, you say that these horses were where at that time—at Barnard's?

A. At Barnard's, yes, sir. I counted them as they went by.

Q. How do you know they were Barnard's horses?

A. Because I had seen him leading them around there, breaking them and riding them on the range in the spring of the year, gathering up horses.

Q. Now, where were those horses taken to, do you know?

(Testimony of William Shepard.)

A. Why he fetched them to Greenville; at least, that is what he said. He might have sold them along the road, or traded them off, or something.

Q. Did you converse with Watson at about that time? A. Yes, sir.

Q. What was the fact about his saying anything about his ranch?

A. Well, he said he wanted to go back and prove up.

Q. Did he say why?

A. Well, he said the parties wanted him to come back.

Q. Who did he say wanted him to come back?

A. Well, he had reference to Mr. Hendricks—the company.

Q. Did he give you any reason why he didn't go back?

A. Well, he didn't think that people wanted him there, I guess.

Q. Did he tell you why?

A. No, he didn't tell me exactly why.

Q. Did he give you any reason why?

A. Well, all the reason was that there was some horses run off that spring, and he says he was hired to do it, and he didn't suppose the settlers wanted him to come back.

(Testimony of William Shepard.)

Mr. BENNETT.—We move that all that conversation be stricken out as incompetent and hearsay against this defendant.

COURT.—That conversation is competent. That conversation was all with Watson? A. Yes, sir.

Mr. BRISTOL.—Relative to the claim, if your Honor pleases.

COURT.—Its relevancy may be as to the bearing upon the question of residence upon the claim by Watson. That is its only relevancy. With that limitation upon it, I think it is competent.

Mr. BRISTOL.—That is the only purpose, may it please your Honor, for which it is offered.

COURT.—It is, of course, necessary that the Government establish that Watson did not live on that claim as required by the laws of the United States.

Defendant allowed an exception.

The foregoing was all the testimony of the witness Shepard, all the objections taken thereto, all the rulings of the Court thereon and all the exceptions taken thereto. But further, upon the recross-examination of the witness, and after counsel for the defendant had examined the said Shepard at some length, the following proceedings in respect thereof were had, and none others, to wit:

(Testimony of William Shepard.)

Mr. BENNETT.—Q. At the time you claim to have had this conversation with Watson in Greenville was Coe Barnard present?

A. No, sir, he was not. This particular conversation was at Greenville.

Q. You don't claim that Coe Barnard was present at all? A. No, sir, he was not.

Mr. BENNETT.—Now, your Honor, we move to strike out the answer to this question: "Was there anything said by him with reference to a claim he had up Fossil way?" and the answer: "Yes, sir, he had a claim up there." We desire to move the Court to strike that answer out, upon the ground that it is incompetent and immaterial, not binding in any way upon this defendant; and we desire to ask the Court to strike out the answer to the next succeeding question, in which the witness says: "Well, he asked me how it would be for him to go back there, and I said to him: 'If you are making a good living here, trying to be honest, you better stay where you are,' or something to that effect," and upon the ground that it is incompetent, immaterial, hearsay and prejudicial to the defendant, and not in any way binding upon him. And the answer to the question which was asked him some little time afterward, the question being: "What was the fact about his saying anything then about the ranch?" We move to strike

(Testimony of William Shepard.)

out the answer, which was, "He said he wanted to go back and prove up," as being immaterial and incompetent and hearsay, and not in the presence of the defendant, and not in any way binding upon him, and not competent evidence against this defendant as to any fact in the case. And the answer to the succeeding question: "Did he say why?" "A. He said parties wanted him to go back." We desire to move to strike that out as being incompetent and hearsay, not made in the presence of the defendant, in no way binding upon him, not being competent evidence as against this defendant of any fact in the case, and as tending to be prejudicial to the defendant in this case. And the answer to the succeeding question: "For whom did he say he wanted him to go back?"

A. He had reference to Mr. Hendricks." We move to strike that out as being incompetent and immaterial, calling for a conclusion of the witness, and not made in the presence of Mr. Barnard, the defendant, and not in any way binding upon him, and tending to prejudice the defendant in the case by the alleged hearsay statements of some other party. And the answer to the next question, the question being: "And did he give you any reason why he did not go back?" "A. He didn't think the people wanted him there, I guess," being the answer. We move to strike that out as tending to prejudice the de-

(Testimony of William Shepard.)

defendant in this case, incompetent, and not made in the presence of this defendant, not in any way binding upon him, hearsay. And we move to strike out the answer to the next question, the question being: "Did he tell you why?" "A. No, he didn't tell me exactly why," upon the ground that it is incompetent, and not in any way binding upon the defendant, not made in his presence, hearsay. And the answer to the next succeeding question, the question being: "Did he give you any reason why?" "A. Well, all the reason was that there was some horses run off that spring, and he said he was hired to do it, and he didn't suppose the settlers wanted him to go back." We move to strike that out as being incompetent, hearsay, and tending to prejudice the defendant by the statements of another party, for which he is in no way responsible, and not in any way binding upon him. I make this motion at this time. It seems to me if this is to be stricken out at all, it ought to be stricken out now, because the longer anything of that kind stands before the jury the more unfair it becomes, if it is not proper or competent; and therefore we move to strike out each of these statements upon the grounds stated.

COURT.—I have looked into that, Judge. If you have looked into any authorities on that question, I think you will find that the authorities hold that that

(Testimony of William Shepard.)

is admissible testimony under the limitation I stated yesterday.

Mr. BENNETT.—The motion, then, is overruled, as I understand?

COURT.—I have overruled your motion.

Mr. BENNETT.—We take an exception as to each specification of the motion.

Mr. BRISTOL.—The Government renews its limitation as to the purpose for which the testimony was offered. It is solely as to the matter of residence, your Honor.

Witness excused.

And thereupon E. A. PUTNAM was called as a witness upon the part of the government, as a part of its direct case, who testified that his name was E. A. Putnam; that he now lived in Douglas County; that he had formerly lived in Wheeler County, twenty-six or twenty-seven years; that he knew both Mr. Barnard, the defendant, and Charles A. Watson; that he had seen Charles A. Watson in Portland in 1903 at the Merchants' Hotel, about the 28th of April in that year; that there were no other persons present that he was acquainted with, and that they were then inside the Merchants' Hotel; that he had a conversation at that time and place with Charles A.

(Testimony of E. A. Putnam.)

Watson; whereupon the witness was asked the following questions:

Q. State whether or not there was anything in that conversation that showed, or tended to show, where Watson had been about that time or immediately preceding it.

Mr. BENNETT.—We object to that, your Honor, as being incompetent, and not in any way binding upon the defendant in this case, and as hearsay, not the best evidence.

COURT.—It goes in subject to the same ruling. You might make your objection general, Judge. I understand it applies to all conversation had between Watson and any witness, not in the presence of the defendant, wherein Watson referred to his residence or acts connected with his homestead entry.

Mr. BENNETT.—And it may be understood, your Honor, that as these questions are put in, to each of them we interpose the same objection.

COURT.—I so understand. The testimony is admitted solely as bearing upon the question whether or not as a fact Watson did state the truth in respect to the answers that he made in making his final proof.

Q. Just answer the question whether there was anything in that conversation that showed or tended

(Testimony of E. A. Putnam.)

to show where Watson had been or what he had been doing.

A. He had— Yes, we had a conversation.

Q. What did he say?

A. He said he had his foot cut at the time, he had been down working on the Columbia River, down about St. Helens somewhere, and said he had come up, and he was going out home, out to his place, out to where his folks lived.

Q. Did he say where that was?

A. Yes, sir, out towards Forest Grove, out in Washington County.

Q. What was the logging camp you said?

A. It was somewheres, I think, down about St. Helens, somewheres in there, the place I think he said.

In the suggested form of the bill of exceptions, the following question "Whereabouts?" given at the top of the page in reference to the evidence adduced from the witness Morgan, the United States desires the following added to the proposed bill of exceptions in order that it may conform to the record:

Q. Whereabouts?

Objected to as immaterial and incompetent.

COURT.—What is the purpose?

Mr. BRISTOL.—The purpose of this, if your Honor pleases, is to show—and the government pro-

poses to follow it with proof offered for the purpose of showing—a similar act on the part of the defendant, Coe Barnard. We offer to prove by this witness that this witness took a homestead and made proof and that Coe D. Barnard was his witness, and that the witness— (Here counsel was interrupted by)

Mr. BENNETT.—I think if you are going to make a statement of this kind you should make it in writing.

COURT.—Go ahead. It is perfectly proper. To which defendant excepted.

Mr. BRISTOL.—And that at this particular time when this witness proved up, the defendant, Coe D. Barnard, was one of his witnesses and swore to his proof, and we will follow that by showing that at that time this witness did not reside, and never had resided, on that claim—as a similar act.

COURT.—Now make your objection. It is competent testimony.

Mr. BENNETT.—We object to it as immaterial, incompetent, tending to prejudice the defendant, and in no way bearing upon any issue in this case.

Objection overruled. Exception allowed.

COURT.—It is competent, provided it is anywhere near the time. If years elapsed, why it would not be. What time did he make his proof?

Mr. BRISTOL.—June 23, 1904.

COURT.—It will be admitted. You may have your exception.

Mr. BENNETT.—Take an exception, your Honor, and let it go to all this line of proof.

The place in the proposed bill of exceptions where the foregoing matter should be inserted is following the question “Whereabouts?” as above given, and just preceding the question “What is the fact, Mr. Morgan, as to who your witnesses were at the time you made this purported proof?”

On page 9 of the proposed bill of exceptions the United States desires added thereto the following, commencing with the word “Q. How did you come to take it for it?” the following, to wit:

Mr. BENNETT.—Same objection and the further objection that it now appears that the defendant was not in any way connected with the matter so far as that part of it is concerned, at least.

COURT.—Does it appear at all that this defendant was connected with that company?

Mr. BENNETT.—Not in the slightest, your Honor.

Mr. BRISTOL.—Why, in this particular case, your Honor, thus made and offered, there is no substantive evidence that the Butte Creek Land, Livestock

and Lumber Company is represented by the defendant Barnard, nor do I recollect any testimony that shows or tends to show who the officers of that company were in this particular case, but the purpose of the interrogation of the witness is to elicit, in connection with the offer heretofore made, the actual facts with reference to the connection of the defendant, if there was any connection at all. We expect to show that there was a connection and prove it.

Mr. BENNETT.—I think that Mr. Bristol must know that the defendant was not a stockholder in the company, or an officer in the company, or interested in the company in any way.

COURT.—The testimony is undoubtedly competent in my view of it, irrespective of that, provided this defendant was a witness; in other words, if the government can show system it is not relevant who the beneficiaries of that system may have been. That is the point. It would be competent undoubtedly to show who those beneficiaries were, provided the defendant was one of them, or he was their agent, but I do not remember whether there was testimony to show that he was acting on behalf of the company in any way. The testimony I think is competent bearing upon the question of system.

Exception allowed.

A. Well, Mr. Zachary asked me if I would take it up. That is how I come to take it.

Mr. BENNETT.—We move to strike out the answer of the witness and the question as incompetent and immaterial.

COURT.—I do not yet see how we can attribute to this defendant anything by the fact just elicited that Zachary told him to take that place up. It is a remote process of reasoning, it seems to me, that justifies that inference. Now, that this witness took this up without living upon it, without residing upon it and for the purpose of this hypothesis, not in good faith, and that this defendant was his witness and might have been familiar with the situation is perfectly competent, but I do not see how you can get the Zachary part into it unless you can connect Zachary and this defendant. I do not believe you have sufficiently brought in this Zachary matter in connection with the defendant.

Mr. BRISTOL.—Then the Government asks, your Honor, that the entire matter relating to the proposed agreement with the livestock company and the antecedent relations with Zachary, as disclosed by this witness, be expunged from the record, because I have no intention to get in evidence that is deemed by the Court to be foreign to the actual transaction.

COURT.—Let that go out, then. It is the purpose of this amendment to have it all inserted prior to the words on page 9 of the proposed bill, “There was no testimony offered,” etc.

Redirect Examination—MORGAN.

Q. Can you tell us how it was that Mr. Barnard came to be your witness?

A. I never said anything to him about being a witness.

Q. Well, that is not my question. I asked you if you can tell us how it was he came to be your witness.

A. Well, somebody must have asked him to be a witness. It wasn't me. I don't know who it was. He was there—he was a witness.

Recross-examination.

Q. Did you advertise who your witnesses were going to be?

A. It was advertised, yes.

Q. How long before?

A. I don't know how long—six weeks, I guess.

Q. Was Mr. Barnard advertised as one of the witnesses?

A. Well, I didn't look at the paper. I guess he was there, though, if it was on the paper; that is all I know about it.

(Testimony of Morgan.)

Redirect Examination.

Q. Judge Bennett asked you whether you advertised the claim, and your answer was it was advertised. Now, then, did you advertise it?

A. No.

Q. Who did?

A. I don't know who put it in the paper. All I know is that it was in the paper. The Butte Creek Company must have advertised it; it wasn't me.

Recross-examination.

Q. You saw it in the paper? A. Yes, sir.

Q. Saw it running right along in the paper for the necessary time?

A. Well, I didn't watch it all the time, no.

Q. And at the time fixed in the paper, you went up there and proved up? A. Yes, sir.

Q. In accordance with that notice?

A. Yes, sir.

Q. And you say you did that because you wanted to get rid of the place? A. Yes, sir.

Redirect Examination.

Q. Well, why did you want to get rid of the place?

A. Well, I didn't want to stay in that part of the country any more. I intended going to California,

(Testimony of Morgan.)

and I wanted to get it squared up before I went away from there.

Q. Get what squared up?

A. That homestead claim.

Q. What was there to square up about it?

A. Well, there was the deal with the company. I had taken the claim for the company, and I wanted to get a deed for it, and get the money that was coming to me, and square up the deal.

Recross-examination.

Q. You were after your money from the company?

A. Well, when a man has got anything coming, why he generally wants it.

Q. What say?

A. If you have got anything coming, you generally want it.

Q. That was the reason why you were swearing to all these falsehoods, because you wanted that money, eh?

A. Well, not in particular, no.

Q. Oh, you weren't lying for the money, then?

A. No, I was lying because the company wanted the land.

Q. You were not lying to get the money?

A. Well, I would take the money, yes.

Q. That wasn't what you was lying for?

(Testimony of Morgan.)

A. Well, I was lying for accommodation, I guess.

Q. Yes, you was lying for accommodation?

A. Yes.

Q. It wasn't the money that you was going to get out of it?

A. Well, the money was connected with it, too.

Q. Which was the main object? Do you claim that the main object was the accommodation?

A. Well, it didn't make much difference to me. I didn't care anything about it; didn't care whether I proved up on it or not.

Q. You didn't care anything about the money you were going to get?

A. Well, I didn't have to have the money; I didn't need it in particular.

Q. No? But you were willing to lie for it, when you didn't need it?

Redirect Examination.

Q. Talking about this lying business, now. Just tell this jury the fact whether or not what lying you did do was done at the request, procurement, and solicitation of somebody else, for whom you were being used to take up that claim.

Mr. BENNETT.—We object to that as self-serving and leading, and putting the words in the wit-

(Testimony of Morgan.)

ness' mouth, and as being entirely incompetent against this defendant.

Objection overruled.

A. Well, I wouldn't have done any lying if I hadn't been asked to have done it.

Recross-examination.

Q. You didn't do it, then, because you were anxious to get the money out of it?

A. No, sir.

Q. That didn't have anything to do with it at all?

A. No; I could have got along without the money very easily.

Q. You were willing to swear to a falsehood to accommodate somebody that wasn't anything to you at all, you claim?

A. It had been done for the last twenty years; everybody else had done it, and I thought I might as well lie a little bit as the rest of them.

Q. For accommodation or for the money?

A. Well, I answered that once.

COURT.—He has covered all that two or three times, Judge.

Witness excused.

JOHN MORGAN, recalled for further cross-examination.

(Questions by Mr. BENNETT.)

Mr. Morgan, was there a house on this claim of yours? A. Yes, sir.

Q. Did you sleep in that house when you was down there? A. On my claim?

Q. Yes. A. Yes, sir.

Q. You say you didn't the night you and your wife stayed there? You say you stayed there one night? A. I didn't stay there one night.

Q. You didn't? A. No.

Q. Was there furniture in the house?

A. There was furniture in the house where we stayed, yes.

Q. Well, was there furniture in the house on your place?

A. I didn't see any furniture there. There was a bedstead there.

Q. Table? A. Yes, sir.

Q. Stools?

A. There might have been a stool; I don't know.

Q. A stove? A. Yes, sir.

Q. Nor, after you proved up, you relinquished your claim, and sold your house and stove, and all the improvements on it, and the fencing to Mr. Kelsay, didn't you?

(Testimony of John Morgan.)

A. No, sir, I didn't sell it to Mr. Kelsay at all.

Q. Did you let Mr. Kelsay have it?

A. No, sir.

Q. Did Mr. Kelsay pay you any money for it?

A. No, sir.

Q. You claim he didn't?

A. Why, he didn't no. It wasn't mine; I wasn't going to sell it to Kelsay.

Q. You didn't sell those things to Kelsay at all?

A. Why, of course, I didn't.

Q. Nor to anybody? A. No.

Q. You swear positively to that? A. Why, yes.

Q. And you never got any money from him for them? A. No, sir.

Q. Did you get any money from him at all?

A. No, sir.

Q. You claim you didn't get any money from Kelsay for anything?

A. I didn't get any money from Kelsay at all.

Q. For anything at all? A. No.

Q. And Kelsay don't owe you any money for anything at all?

A. No, sir. I didn't sell Kelsay anything.

Q. Nor anybody anything in connection with that place?

A. I didn't sell anything on the place at all.

(Testimony of John Morgan.)

Q. Well, did you sell anybody anything in connection with that place at all? A. No; no.

Q. Did you sell anybody your right to the place?

A. I didn't have no right to the place.

Q. Well, did you sell anybody your claim on the place?

A. What kind of a claim do you mean?

Q. Well, any kind of a claim.

A. I didn't have no claim on the place.

Q. And you didn't sell anybody any claim on the place? A. No, sir; I had no claim to sell.

Q. You didn't sell anybody any claim to the place, or any claim about the place, in any way, shape or manner? A. I didn't sell no claim, no.

Q. Well, did you have any deal with anybody about that place after you proved up?

A. No, not after I proved up. I didn't prove up. I didn't get a deed to the place. I relinquished the place.

Q. After you proved up, did you have any deal with anybody about that place? A. No.

Q. After you made your final proof?

A. No. The deal was already made.

Q. You never made any deal with anybody after that? A. Not with Kelsay, no, or anybody.

(Testimony of John Morgan.)

Q. You went and drew down the money that you had put up for the place? Do you deny that, too?

A. Yes.

Mr. BRISTOL.—I submit that the witness has answered that two or three times in the other examination, what he did with it.

Q. Didn't you go and draw down the money that had been paid for that land to the land office after you had proved up? A. Yes, sir.

Q. You admit that, do you? A. Yes, sir.

Q. And have got the money yet? A. Yes, sir.

Q. Now, did you write that letter?

A. Yes, sir.

Mr. BENNETT.—I ask that that be marked for identification.

Marked, "Identified by John Morgan as written by him."

Redirect Examination.

Q. To whom is that letter addressed?

A. Cant Zachary.

Q. Who is Cant Zachary, or who was he at that time?

A. Cant Zachary? His name was Zachary; that's all I know.

Q. Who was he? What was he doing? Why did you write to him about it?

(Testimony of John Morgan.)

A. He was one of the Butte Creek Land, Live Stock & Lumber Co.

Q. How did you come to write that letter to him?

A. Why, he wrote to me. He was talking to my wife, and I wrote to him.

Q. When did he write to you—before you wrote that letter?

A. I don't know if he did or not; I got a letter from him.

Q. Part of that same matter? The letter you got from Zachary, is it a part of that same matter to which that letter refers? A. Yes, sir.

Q. Do you know where that letter is?

A. Well, I think you have got the letter.

Q. You mean the one that is addressed to you in Oakland? A. Yes, sir.

Q. By Zachary? A. Yes, sir.

Q. You mean the letter that you gave me in which he dunned you for some \$200? Is that the letter you mean? A. Yes, sir.

Objected to.

Mr. BRISTOL.—I have a right to ask him about the transaction, I think.

Mr. BENNETT.—I think he has no right to ask him about the contents of the letter. If he has got the letter he can put it in, if he wants to.

(Testimony of John Morgan.)

COURT.—Not until you offer it, unless he desires to offer it himself.

Mr. BENNETT.—Well, I will offer the letter, then. I will offer it now.

Objected to.

COURT.—I think it is incompetent on cross-examination as bearing upon the credibility of the witness.

Mr. BENNETT.—That is all the purpose it is offered for, your Honor.

COURT.—For that purpose alone it is admitted. Marked Defendant's Exhibit "B."

Q. Now, what does the sum of money referred to by you in that letter relate to?

A. Well, it relates to the money that was paid to me at the land office.

Q. Just explain what that money was originally put up for, if you can.

A. It was put up for homestead proof.

Q. Do you know who put it up?

A. Well, I don't know who put it up. I have an idea that the company put it up.

Q. Was that a part of the transaction that you referred to last night?

A. I don't know what it was last night.

(Testimony of John Morgan.)

Q. With reference to the amount of money that you were to get for your claim, I mean?

A. I don't know.

Q. Well, if there was any amount originally agreed to be paid you, if you proved up upon your claim, did you receive it, and if not, was there any other arrangement made by which you did receive an equivalent amount of money? State what the fact is in regard to that.

Objected to as immaterial and incompetent, and not binding upon the defendant in any way.

COURT.—There are references in that letter which he has a right to explain, if he can, in justice to himself, because they appear to reflect upon his credibility by reflection upon his character.

Exception allowed.

Q. Tell us what the fact is, whether you received the money that was part of the original transaction, if that is the understanding that you had, or whether you took the money referred to in that letter, or received the money that is referred to in that letter, howsoever you got it, in lieu of the money that you were to receive as you explained last night?

Mr. BENNETT.—Objected to as leading, and putting words in the witness' mouth. I think if the

(Testimony of John Morgan.)

witness is permitted to explain at all, he ought to explain, and not have the counsel explain it and have him say Amen to it.

COURT.—Oh, I don't think that is very well taken. To ask him to explain what he means, perhaps would be better. Take that passage in the letter that refers to the money, and ask him to explain the whole transaction.

Q. I call your attention to this phraseology in Defendant's Exhibit "B": "Corey told me that you said you let me have \$200." Now, what did that \$200 refer to, and state whether or not it was part of the transaction that you referred to last night?

A. Well, the \$200 was paid in for that homestead claim. I drew down the \$200 at The Dalles. I suppose it belonged to the company. I don't know who it belonged to.

Q. Well, did it have anything to do with the transaction as the amount that you were to receive for your land, or did you just go and deliberately take it?

A. I was to receive \$300 for the claim when I proved up.

Q. And this sum of \$200, as I understand it, that is referred to in that letter was applied by you as a part of the transaction that you referred to last night? Is that the understanding?

(Testimony of John Morgan.)

Mr. BENNETT.—I submit, may it please your Honor, that the witness ought not to have these things put into his mouth.

Objection sustained. Question withdrawn.

Q. How much do you say you were to receive for your claim? A. Three hundred dollars.

Q. Now, state what the fact is as to whether or not the \$200 referred to in that letter was used by you, or applied by you, as a part of that consideration.

Objected to as leading.

COURT.—Oh, no; that is perfectly proper, I think. Exception.

A. It was used—that was used to buy the land with, that money was.

Q. I don't hear what you say. Please speak up so the jury can hear you.

A. It was paid in to the Government for the land, that money was. (Question read.)

A. I didn't use the money. I got the money.

Q. Well, what did you get it for? What I am trying to get at is this: Were you ever paid the \$300 that you speak about? A. No, sir.

Q. Now, what did you do with this \$200? Did it have any relation to the \$300, or any part of it?

A. Well, yes. I intended to keep \$150 of it to square the \$30, and give him the remainder.

(Testimony of John Morgan.)

Recross-examination.

Q. You relinquished your claim and drew down this money? A. Yes, sir.

Q. At the same time. And that was before you wrote this letter?

A. That I relinquished it?

Q. I say, it was before you wrote this letter that you drew down the money? A. Yes, sir.

Q. You are not under any indictment?

A. Didn't I say that I would make a deal with the man in that letter? Didn't I say that I would make a deal with Mr. Zachary in that letter? Yes.

Q. Well, it was before you wrote this letter that you drew down that money? A. Yes, sir.

Q. You relinquished your claim and drew down the money, and then afterwards wrote this letter?

A. Yes, sir.

Q. You are not under any indictment?

A. Not that I know of.

Redirect Examination.

Q. What is the fact as to whether Zachary got mad at you for relinquishing or not?

Objected to as immaterial and incompetent.

A. Well, I didn't see him afterwards.

Objected to as immaterial and incompetent; more particularly so now, after this answer.

(Testimony of John Morgan.)

Q. Did he express to you in any way, other than by word of mouth, whether he was dissatisfied with your having relinquished the claim, and not performed the agreement between you and him as to the claim?

Mr. BENNETT.—Objected to. They have got that letter, and can offer it in evidence if they want to.

COURT.—That is right.

Mr. BRISTOL.—I am trying to find out whether there was such a communication.

COURT.—Answer whether there was a letter, then.

A. He wrote me a letter in regard to it, yes.

Q. Was that after or before Defendant's Exhibit "B," which appears to be dated April 12, 1904.

A. It was after.

Recross-examination.

Q. You gave that letter to Mr. Bristol, did you?

A. No, sir.

Q. You say you didn't give that letter to Mr. Bristol? A. No.

Q. But you gave the letter to Mr. Bristol that this letter is an answer to?

A. Mr. Bristol has got the letter.

(Testimony of John Morgan.)

Mr. BRISTOL.—Do you want to know where that other letter is?

Mr. BENNETT.—I know where it is now. You have got it.

Mr. BRISTOL.—I will inform you that I have not got it, if you want to know. It is not in the building, as far as that is concerned.

Mr. BENNETT.—I only go by the testimony on the stand. The witness said he gave it to you.

A. I didn't say I gave it to him.

Q. It was a letter that this was written in answer to, was it? A. Yes, sir.

Redirect Examination.

Q. What is the fact as to whether you gave the letter that you wrote in response to Defendant's Exhibit "B" to me, personally, or did you give it to somebody else, and afterwards see it in my possession?

A. I seen it in your possession. I didn't give it to you at all.

Excused.

That it should further be certified that there was other testimony on the part of the Government tending to show that Watson was in Washington county, Oregon, in December, 1900, in February, 1901, in

May, 1902, and in May, 1903; that Watson had had a conversation with the witness Bledsoe and had told the witness that he had been in Missouri in the year 1900; that this conversation occurred in July, 1901; that Charles A. Watson had worked for the witness Bradley in March and April of the year 1902; that in August, October and November, 1898, Watson had transactions with the witness Moore, who conducted a store at Greenville; and also in October, November and December of 1900, and in January, February and May, 1901, and had like transactions with the firm of Moore & Son in March, April, May, June, July, August and October, 1902; that these were personal transactions with the man Watson over the counter of the store; and the witness Ireland corroborated the witness Moore. There was evidence from the witness Butler, Clerk of Wheeler county, that Watson's name did not appear upon the registration or poll-books of that county, and by witness Godman, Clerk of Washington county, that Watson had registered in that county under date of the 19th of March, 1902; by the Witness Clymer, a postmaster at Fossil; that he had not delivered any mail for Watson but had been requested by Coe Barnard to put Charlie Watson's mail in Coe Barnard's box; that he didn't remember prior to 1903 of Watson ever getting his mail at the postoffice in Fossil.

There was other testimony tending to show that Watson had not been seen by the witnesses in Wheeler county at the times or within the periods named in the indictment, except occasionally. It was the testimony of Henry Neal, a witness, that in 1901 he heard Coe Barnard and Cant Zachary talking together about Watson going away from Wheeler county with horses and not having come back, and that Watson had not shown up at that time.

There was other testimony given by the witnesses Coombs, Scoggin, King, Parker and Kennedy, tending to corroborate the other witnesses for the Government and tending to show the facts stated in the indictment.

That there be certified as a part of the proposed bill of exceptions, on page 13 thereof, following the words "A. Homestead that he proved up on before me," the following, to wit:

Q. Well, what homestead do you know?

A. The homestead described here (referring to final proof.)

Q. What homestead?

Objected to as incompetent, immaterial, not proper cross-examination. This witness was called simply as to the question as to the character of Mr. Barnard. Now, I do not see upon what theory of cross-examina-

tion they can put a paper of this kind into his hands and proceed to examine him about it and cross-examine upon that point.

COURT.—What is the purpose of this cross-examination?

Mr. BRISTOL.—I propose to show by this witness matter affecting the reputation for truth and veracity of the defendant Coe Barnard. Nothing more, nothing less.

COURT.—Can you show it by a specific instance?

Mr. BRISTOL.—I can, your Honor. I propose to show by this witness that Coe D. Barnard, at a time before this witness as United States Commissioner, swore to the fact that he had continuously resided upon a place as a homestead other than the place fixed as his place.

COURT.—I am not asking you the specific instance. I am asking you whether you can assail reputation by specific instance or whether your question must not be confined to a general reputation?

Mr. BRISTOL.—I think, with respect to that, that generally it is confined where the matter is thought to be general without regard to any specific act, but the question in this case is this: The witness testifies generally to reputation for truth and veracity. Now, if

he knows an instance or instances affecting that matter, that is, the matter concerning that part witness answered at about the same time and which entered into his estimate of the truth and veracity of the person inquired about, it would seem then to be competent, but I do not claim that you can introduce specific instances against general reputation for truth and veracity.

COURT.—That is all you can ask as to general reputation. I don't know what the best modern authority is with respect to this. There is a good deal to be said on both sides.

Mr. BRISTOL.—The Government does not wish to insist upon it if the Court feels that it is incompetent.

COURT.—You may go ahead, Mr. Bristol. Just pass this point and between now and two o'clock you can see what you want to do.

Question to the Witness.—The estimate you made of the character of the defendant was based upon what?

A. Just what his neighbors think about him generally in that community.

Q. What opportunity did you have of knowing that?

A. I have lived there in that community so long that just the same opportunity I had to know anyone's character around the neighborhood.

Q. And do you swear positively that you know nothing otherwise than that the reputation for truth and veracity of the defendant is good?

A. Yes, I do.

Q. You are sure of that, are you?

A. Yes, sir.

Q. Isn't it a fact that for a long time you have heard from the same sources, that is, his neighbors and the residents of Wheeler county, matters which did affect generally his reputation for truth and veracity? A. No, sir.

A. No, sir.

Q. You swear to that, do you? A. Yes, sir.

Q. Positively? A. Yes, sir.

Mr. BRISTOL.—Now, so far as the further cross-examination of the witness is concerned, may it please your Honor, the Government cannot pursue it further until the matter in question may be disposed of.

The witness Stewart thereupon resumed the stand, and the Court overruled the objection to the question under consideration, to which ruling the defendant excepted.

The following question was then asked the witness :

Q. What is the fact, Mr. Stewart, as to whether or not you have heard or know whether Coe D. Barnard, on or about the 23d day of June, 1904, before you as United States Commissioner, gave any testimony under oath then in a matter before you?

Mr. BENNETT.—Now, we object to that part of it in which the witness is asked to state what he may know of his own knowledge.

Mr. BRISTOL.—I said “heard or know,” Judge.

Mr. BENNETT.—Well, I don't object to the “heard” part of it, but what he knows, that I object to as incompetent and not proper cross-examination.

COURT.—Now, let that go over the Judge's objection and note his exception. I understand all this testimony will be objected and the exception preserved.

The witness was then shown a paper and stated that that contained the matter to which he referred and which occurred before him as a Commissioner. The witness was then handed the paper and asked to look at it and state if he knew whose signature was upon it, and he answered that it was Mr. Bar-

nard's, and that it bore his official signature as a United States Commissioner.

Cross-examination—STEWART.

Mr. BRISTOL.—The Government proposes to offer that part of the paper, in connection with the cross-examination of the witness, concerning the homestead proof, testimony of claimant, identified by the witness as that of Coe D. Barnard.

Objected to as incompetent, immaterial, and not proper cross-examination.

Objection overruled. Exception allowed.

The paper is marked Government's Exhibit "9-A," and read in evidence.

Q. What is the fact as to your having heard, if you have heard, whether or not Coe D. Barnard was generally in the neighborhood, in Wheeler County, known as a common witness for many homestead entrymen?

Objected to as incompetent, immaterial, and not in any way detracting from the reputation of the witness, and not being proper cross-examination.

COURT.—I believe that is proper, Judge.

Mr. BENNETT.—Exception.

Mr. BRISTOL.—It is simply offered, your Honor, with the same limitation as before, as affecting the witness' answer "Good" as he made it before.

COURT.—Of course, the only way in which that could be competent would be that the fact of reputation of being a witness to a great many homestead carried with it some imputation of bad faith or degradation of character as to the person who was a witness. I don't know that that does. A man might be a witness to a great many homestead proofs.

Mr. BRISTOL.—But if, in the general rumored matter in the community, as a matter of reputation so far as this witness knows, he does know, in view of his answer “Good,” that he was a professional witness, or a witness in a very, very large number of cases, it is submitted that that is a fact bearing upon the weight to be given to the witness' answer “Good,” in connection with the other circumstances offered in evidence in this case.

COURT.—I don't know that it logically follows, unless there is coupled with that, that he is a witness in a great many homestead cases where the good faith of the homesteader is in question.

Mr. BRISTOL.—Very well. We will waive that matter.

COURT.—I don't think that would be competent testimony.

Mr. BRISTOL.—Question withdrawn. Take the witness.

Redirect Examination.

Q. Mr. Stewart, do you know anything about how much Coe Barnard lived on his homestead claim, that he proved up on before you?

A. Nothing except what he swore to in his proof.

Q. You don't know anything about that at all?

A. No; I know absolutely nothing about it.

Q. Do you know anything about how many improvements he had on the place? A. No, sir.

Q. Do you know anything about whether or not his family resided on the place?

A. I do not, any more than what he swore to in his proof.

Q. Do you know anything as to whether the statements made in his proof were true or false?

A. I do not.

Mr. BENNETT.—Now, your Honor, we move to strike out the final proof upon the ground that it is immaterial and incompetent, and improper cross-examination, and its only purpose can be put the defendant on trial and compel him to explain a matter which has nothing whatever to do with this case.

COURT.—Whose proof was that, that this witness testified to?

Mr. BRISTOL.—That was the proof of Coe D. Barnard, the defendant.

COURT.—On his own place?

A. Yes, sir, his own place.

Mr. BRISTOL.—On a place that he at that time was proving up on, there being evidence already in the record, offered by the defendant's witnesses in that same connection, that the family, including the defendant Barnard, never lived anywhere else than upon the home place of Barnard's on Butte Creek, during the entire period from somewhere in the neighborhood of 1898.

Motion overruled. Defendant excepts.

Excused.

Order Relative to Bill of Exceptions.

And this bill of exceptions having been duly prepared and served within the time heretofore fixed by order of the Court, and being duly corrected and amended until it corresponds with the facts of the case, is now filed with amendments attached and made a part of the records in this cause.

May 3, 1907.

WM. H. HUNT,
Judge.

United States of America,
For the District of Oregon,—ss.

I hereby certify that I have fully compared the foregoing copy with the original thereof and that the same is a full, true and correct copy of said original and of the whole thereof.

_____,
Attorney for Defendant.

Due and legal services of the foregoing bill of exceptions upon me at Portland, Oregon, this 14 day of November, 1906, is hereby acknowledged.

W. C. BRISTOL,
Attorney for Plaintiff.

Allowed and filed May 3, 1907.

J. A. SLADEN,
Clerk U. S. Circuit Court, for the District of Oregon.

Government's Exhibit "1-a."

AFFIDAVIT OF PUBLICATION.

State of Oregon,
County of Wheeler,—ss.

Jas. S. Stewart, being duly sworn, deposes and says: That he is the publisher and foreman of the "Fossil Journal," a weekly newspaper of general circulation, published at Fossil, in Wheeler County, State of Oregon, and that the notice, a printed copy of which is attached hereto, has been published in the

regular edition of said newspaper, and not in any supplement thereof, for a period of six consecutive weeks, commencing with the issue of May 13, 1904, and ending with the issue of June 17, 1904.

JAS. S. STEWART,

Subscribed and sworn to before me this 25th day of June, 1904.

[Seal]

H. H. HENDERSON,
Notary Public for Oregon.

UNITED STATES LAND OFFICE.

The Dalles, Oregon, ———, 190—.

I, ———, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of ——— days, I having posted said notice on the ——— day of ———, 190—.

—————,
Register.

NOTICE FOR PUBLICATION.

UNITED STATES LAND OFFICE,

The Dalles, Oregon, April 22d, 1904.

Notice is hereby given that the following named settler had filed notice of his intention to make final proof in support of his claim, and that said final proof will be made before Jas. S. Stewart, U. S. Commis-

sioner at his office at Fossil, Oregon, June 21st, 1904, viz.:

CHARLES A. WATSON, of Fossil, Oregon.

H. E. No. 6395 for the S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, NW. $\frac{1}{4}$ and NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 11, Tp. 6 South, Range 19 E., W. M. He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz.: Halbert Bills, C. E. Zachary, Coe D. Barnard and R. V. Zachary, all of Fossil, Oregon.

MICHAEL T. NOLAN,

Register.

Government's Exhibit "2-a."

4—227.

CERTIFICATE AS TO POSTING OF NOTICE.

DEPARTMENT OF THE INTERIOR,

United States Land Office,

At The Dalles, Oregon, June 29, 1904.

I, Michael T. Nolan, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 22d day of April, 1904.

MICHAEL T. NOLAN,

Register.

Government's Exhibit "3-a."

4—348.

No. 1.—HOMESTEAD.

Land Office at The Dalles, Oregon,

March 23, 1904.

I, Charles A. Watson, of Fossil, Oregon, who made Homestead Application No. 6395 for the S2 NE4 SE4 NW4 and NE4 SW4 of Sec. 11, Tp. 6 S. of R. 19 E., W. M., do hereby give notice of my intention to make final proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before Jas. S. Stewart, U. S. Com., at Fossil, Oregon, on June 21, 1904, by two of the following witnesses:

Halbert Bills, of Fossil, Oregon,

C. B. Zachary, of Fossil, Oregon,

Coe D. Barnard, of Fossil, Oregon,

R. V. Zachary, of Fossil, Oregon.

CHARLES A. WATSON.

(Signature of Claimant.)

Land Office at The Dalles, Oregon,

Apr. 22, 1904.

Notice of the above application will be published in the Fossil Journal printed at Fossil, Oregon, which

I hereby designate as the newspaper published nearest the land described in said application.

MICHAEL T. NOLAN,

Register.

NOTICE TO CLAIMANT.—Give time and place of proving up and name the title of the officer before whom proof is to be made; also give names and post-office address of four neighbors, two of whom must appear as your witnesses.

Government's Exhibit "4-a."

Receiver's Duplicate Receipt No. 6395.

Application No. 6395.

HOMESTEAD.

Receiver's Office, The Dalles, Oregon,

Jany. 8, 1898.

Received of Charles A. Watson the sum of Sixteen dollars cents; being the amount of fee and compensation of register and receiver for the entry of S2 NE4 SE4 NW4 and NE4 SW4 of Section 11 in Township 6 S. of Range 19 E., under Section 2290, Revised Statutes of the United States.

WILLIAM H. BIGGS,

\$16.

Receiver.

NOTE. It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim.

Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be cancelled. If the settler does not wish to remain five years on his tract he can, at any time after fourteen months, pay for it with cash or land-warrants, upon making proof of settlement and cultivation from date of filing affidavit to the time of payment.

(Printed on margin in red ink.)

See note in red ink which Registers and Receivers will read and explain thoroughly to person making application for lands where the affidavit is made before either of them.

Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land and improve the premises, but for no other purpose.

If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question whether the land is being cleared of its timber for legitimate purposes is a question of fact which is liable to be raised at any time. If the timber is cut and removed for any other purpose it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for recovery of the value of said timber, and also to

criminal prosecution under Section 2461 of the Revised Statutes.

Government's Exhibit "5-a."

4—062.

NON-MINERAL AFFIDAVIT.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and belief.

The Non-Mineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

DEPARTMENT OF THE INTERIOR,

United States Land Office,

The Dalles, Oregon,

June 23, 1904.

Charles A. Watson, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the S2 NE4, SE4 NW4 and NE4 SW4, Sec. 11 Tp. 6 S. R. 19 E., W. M; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver,

cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; and that his post-office address is Fossil, Oregon.

CHARLES A. WATSON.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by —————), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Fossil, Ore-

gon, within the Dalles, Oregon, land district, on this 23d day of June, 1904.

JAS. S. STEWART,
U. S. Com. for Oregon.

NOTE.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

REVISED STATUTES OF THE UNITED STATES.

Title LXX.—CRIMES.—Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Government's Exhibit "6-a."

State of Oregon,
County of Wheeler.

Charles A. Watson, being first duly sworn, deposes and says: I am the identical person who made final proof on homestead entry No. 6395 before Jas. S. Stewart, United States Commissioner, at his office in Fossil, Oregon, on June 23, 1904. The reason that I did not proof on June 21, 1904, as advertised, was that my witnesses were engaged in the

annual ride for calves in this neighborhood, and could not leave to go to town till to-day.

CHARLES A. WATSON.

Sworn to and subscribed before me this 23d day of June, 1904, at my office in Fossil, Ore.

JAS. S. STEWART,
U. S. Com. for Oregon.

Government's Exhibit "7-a."

4-369.

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Coe D. Barnard, being called as witness in support of the homestead entry of Charles A. Watson for S2 NE4, SE4 NW4 and NE4 SW4 Sec. 11, Tp. 6 S., R. 19 E. W. M., testifies as follows:

Ques. 1.—What is your name, age, and post-office address?

Ans. Coe D. Barnard, age 31 years, Fossil, Ore.

Ques. 2.—Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3.—Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4.—State specifically the character of this land—whether it is timber, grazing, farming, coal, or mineral land.

Ans. Grazing land, rough and mountainous.

Ques. 5.—When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. In the Spring of 1898; established residence at the same time.

Ques. 6.—Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes, except as stated below. He is unmarried. I live about eight miles from settler's place. In riding for my stock I frequently ride past his place and stop at his house.

Ques. 7.—For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He made a trip to the Willamette Valley in July, 1902, for the benefit of his health, and returned in October, 1902.

Ques. 8.—How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About two acres; he raised a garden on it every year since 1898. The rest of the land is too

steep, rough and rocky for cultivation. He pastures about 25 head of his horses on the place.

Ques. 9.—What improvements are on the land, and what is their value?

Ans. Lumber house 12x16 lumber roof, lumber floor, one room, ceiled and papered, good spring water; all fenced with 3-wires; total value improvements about \$250.00; one door and one window.

Ques. 10.—Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11.—Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12.—Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. Yes.

[Sign plainly with full Christian name.]

COE D. BARNARD.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was

sworn to before me this 23d day of June, 1904, at my office at Fossil, in Wheeler County, Oregon.

[See note on fourth page.]

JAS. S. STEWART,
U. S. Com. for Oregon.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

4—369.

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Clarence B. Zachary, being called as witness in support of the homestead entry of Charles A. Watson for S2 NE4 SE4 NW4 and NE4 SW4, Sec. 11, Tp. 9 S., R. 23 E., W. M., testifies as follows:

Ques. 1.—What is your name, age and post-office address?

Ans. Clarence B. Zachary, age 39 years, Fossil, Ore.

Ques. 2.—Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3.—Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4.—State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Grazing, very rough, steep and rocky.

Ques. 5.—When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. About six years ago he built a house and took up his residence therein.

Ques. 6.—Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes, except as stated below; he is unmarried.

Ques. 7.—For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. From July until October, 1902, when he made a trip to the Willamette Valley to see his parents.

Ques. 8.—How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About two acres of creek bottom garden land, the rest of the land is too rough and rocky for

cultivation. He pastures from 20 to 30 head of horses on the place.

Ques. 9.—What improvements are on the land, and what is their value?

Ans. Good lumber house 12x14, lumber roof; one window and one door, good spring water; place is all inclosed with 3-wire fence, house is ceiled and papered and is comfortable at all times of the year. Total value of improvements \$250.00. I live 1½ miles from his place.

Ques. 10.—Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11.—Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not that I know of.

Ques. 12.—Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. Yes.

[Sign plainly with full Christian name.]

CLARENCE B. ZACHARY,

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was

sworn to before me this 23d day of June, 1904, at my office at Fossil, in Wheeler County, Oregon.

[See note on fourth page.]

JAS. S. STEWART,
U. S. Com. for Oregon.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

Government's Exhibit

4—369.

HOMESTEAD PROOF—TESTIMONY OF CLAIMANT.

Charles A. Watson, being called as a witness in his own behalf in support of homestead entry No. 6395, for S2 NE4, SE4 NW4 & NE4 SW4, Sec. 11, Tp. 6 S. of R. 19 E., W. M., testifies as follows:

Ques. 1.—What is your name, age, and post-office address?

Ans. Charles A. Watson, age 31, Fossil, Oregon.

Ques. 2.—Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?*

* In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases.

Ans. Yes; born in Missouri.

Ques. 3.—Are you the identical person who made homestead entry No. 6395, at the Dalles, Oregon, land office on the 8th day of January, 1898, and what is the true description of the land now claimed by you?

Ans. S2 NE4, SE4 NW4 and NE4 SW4 Sec. 11, Tp. 6 S., R. 19 E., W. M.

Ques. 4.—When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. House was built on land in March, 1898; established residence therein at that time. House is of lumber, size 12 x 14, lumber roof, good lumber floor, one door and one window, stovepipe in roof, well protected from fire, house is ceiled with rough lumber and papered, good spring water; two acres garden plowed on creek bottom; rest of land is too steep and rough for cultivation; house is comfortable and habitable at all times of year. Place is all fenced with three-wire fence. Total value of improvements, \$250.

I have pastured on an average fifteen head of my horses on the place each year, sometimes a greater number and sometimes less.

Ques. 5.—Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Myself; I am unmarried. Yes, except as stated below.

Ques. 6.—For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. Was sick in year 1902, when I visited my parents in Washington Co., Oregon; I went there in July, 1902, and returned in October, 1902.

Ques. 7.—How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. About two acres, raised a garden on same every year since I took it up in 1898.

Ques. 8.—Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. No.

Ques. 9.—What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. Grazing land, steep and very rough, most valuable for grazing.

Ques. 10.—Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11.—Have you ever made any other homestead entry? (If so, describe the same.)

Ans. No.

Ques. 12.—Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. No.

Ques. 13.—Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

Ans. No.

Ques. 14.—Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. None.

[Sign plainly with full Christian name.]

CHARLES A. WATSON.

I hereby certify that the foregoing testimony was read to the claimant before being subscribed, and was

sworn to before me this 23d day of June, 1904, at my office at Fossil, in Wheeler County, Oregon.

[See Note Below.]

JAS. S. STEWART.

U. S. Com. for Oregon.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testified falsely, to prosecute him to the full extent of the law.

Title LXX.—CRIMES.—Ch. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See § 1750.)

[Endorsed]: 4—369. Homestead Proof. Land Office at The Dalles, Oregon. Original Application No. 6395. Final Certificate No. ———. Approved: ———, Register. ———, Receiver. Suspended, Pending Investigation by Special Agent, Thos. B. Neuhausen. Michael T. Nolan, Register. Annie M. Lang, Receiver.

FINAL AFFIDAVIT REQUIRED OF HOME-
STEAD CLAIMANTS.

Section 2291 of the Revised Statutes of the United
States.

I, Charles A. Watson, having made a homestead entry of the S2 NE4, SE4, NW4 and NE4, SW4, Section No. 11, in Township No. 6 S. of Range No. 19 E., W. M., subject to entry at The Dalles, Oregon, land office, under section No. 2289 of the Revised Statutes, do now apply to perfect my claim thereto by virtue of section No. 2291 of the Revised Statutes of the United States; and for that purpose do solemnly swear that I am a native born citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said land since the — day of March, 1898, to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government of the United States; and, further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States,

[Sign plainly with full Christian name.]

CHARLES A. WATSON.

I, Jas. S. Stewart, of Fossil, Oregon, do hereby certify that the above affidavit was subscribed and sworn to before me this 23d day of June, 1904, at my office at Fossil, in Wheeler County, Oregon.

JAS. S. STEWART,
U. S. Com. for Oregon.

Clerk's Certificate to Exhibits Attached to Bill of Exceptions (Copy).

United States of America,
District of Oregon,—ss.

I, J. A. Sladen, Clerk of the Circuit Court of the United States for the District of Oregon, do hereby certify that the foregoing copies of exhibits numbered from 1-A to 7-A, inclusive, are true and complete copies of the exhibits and all of the exhibits, introduced in evidence upon the trial of cause No. 2941, The United States of America vs. Coe D. Barnard, said exhibits being certified and attached to the bill of exceptions in said cause and made a part of said bill of exceptions pursuant to the order of said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Portland, in said District, this 9th day of August, A. D. 1907.

[Seal]

J. A. SLADEN,
Clerk.

And afterwards, to wit, on the 3d day of May, 1907, there was duly filed in said court a copy of order extending time to file transcript of record, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

No. 2943—May 3, 1907.

UNITED STATES OF AMERICA,

vs.

COE D. BARNARD.

Order Extending Time to File Record.

Now, at this day, comes the above-named plaintiff, by Mr. William C. Bristol, United States Attorney, and the defendant herein, by Mr. A. S. Bennett, of counsel, and thereupon, upon agreement of the parties hereto, it is hereby ordered, that the time heretofore allowed said defendant in which to file his transcript of record in this cause, in the United States Circuit Court of Appeals for the Ninth Circuit be, and it is hereby, extended to the 1st day of September, 1907.

WILLIAM H. HUNT,

Judge.

Filed May 3, 1907. J. A. Sladen, Clerk U. S. Circuit Court for the District of Oregon.

Clerk's Certificate to Transcript of Record.

United States of America,
District of Oregon,—ss.

I, J. A. Sladen, Clerk of the Circuit Court of the United States for the District of Oregon, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the foregoing pages numbered from 5 to 173, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The United States of America, plaintiff, and defendant in error, vs. Coe D. Barnard, defendant, and plaintiff in error, as the same appears of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript is ninety-three $\frac{70}{100}$ dollars, and that the same has been paid by said plaintiff in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this 27th day of August, A. D. 1907.

[Seal]

J. A. SLADEN,

Clerk.

[Endorsed]: No. 1499. United States Circuit Court of Appeals for the Ninth Circuit. Coe D. Barnard, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States Circuit Court for the District of Oregon.

Filed September 6, 1907.

FRANK D. MONCKTON,

Clerk.

By Meredith Sawyer,

Deputy Clerk.